/89 cont./

173 we have often borrowed. We would find similar ones outside of the Seksawa for example, in Mez'ud'a, in Mtugga, to restrict ourselves to only immediate neighbors. The existence of such annals reveals a character of the country more profound than its propensity for heroic destinies.

In this country, individuals mark /Fr. marquent, mark, stamp, indicate, testify/, things happen. As paradoxical as the observation may appear, it is not so common in the past of North Africa. Let us understand that here the event leaves its trace in a collective memory. It does or does not utilize writing. In any case, it fixes something much more precise than the simple continuity from generation to generation. /90/ These memories, [538] conscious and detailed, full of imagery and dramatic, even flourish in the literature. For one who has visited other populations, [171] those of the Gharb, for example, what a surprise! In this world of the Atlas, society has a feeling of its own duration. It punctuates its past with victories and vicissitudes. The permanence of family archives depends on the constancy of the group chronicles, from which great figures naturally stand out.

631 These chiefs are temporal chiefs. Not the least attribution in the Frazerian manner. No "kings," but an intendant, a captain, an administrator. This milieu practices the separation of powers. Elsewhere, perhaps, or in other times, dynasties of "marabouts" claimed a mystic efficiency: in origin at least, for the action very soon became profane. Here, on the contrary, in what might [671] be called the public law, both between taqbilt-s and within any [179] one among them, the relation between the sacred and the secular is determined by sharing and contracts, not by confusing one with the other. The aptitude of these societies to record their pasts is explained. No longer does patriarchal indivision reign over individual and community activities, but a careful demarcation; the continuance of the group does not vanish in fleeting perspectives: ancestor saints or golden age. But at all stages the same 181 careful little man is discovered, capable of virtues and subject to the weaknesses of his distant descendants. Individual differentiation, demarcation between the person and the community, the

[Mtugga]

/222 cont./

423 Although all sorts of mutations have affected the parts thus revived, the collective qualification muchû^{c} is still applied to
[613] the whole. On the other hand, and very significantly, although the first appropriation passes for having been done "by seizure," most of the ikhs-s of the Intamlin are still represented at Zahr ou T'amer.

Same symmetry in the vast "collectives" constituting confines between Mtugga and Nfifa.

[443] 4) At the place called Adder, present site of the Wednesday market, and which seems to have formerly been more amply irrigated by the source /223/ of Sidi bu Brahim, is observed a veritable potpourri of owners belonging to diverse Mtugga subdivisions, some of them very far away. Thus, analysis of the
[619] lands reveals there Idaw Merzug, Reh'h'âla, Idaw Talilt, and
[634] even some allogeneous Idaw Ziki and Mentaga.

[539] Tradition applies the following saying to Adder: Adder: taryalt umzil: amesmar enna trit, gis t-tufit, "it is the blacksmith's basket, no matter what nail you want, you find it there." Only a more profound analysis could say if that is pure coincidence or an accidental aggregate, resulting from external causes like the existence of a thermal saint, or traces of systematic distribution.

619 The genre of the Mtugga tribe is quite peculiar, as much from the fact of its size as from the simultaneous play whose spectacle it offers between a very resistant customary archaism
[121] and the latifundian expansion of the "great families." It would be perilous to pursue these analogies in depth in a purely comparative account, the goal of which is not to study their tribal
[671] contexture. May it suffice for us to have noted that, despite such peculiarity, many emergences of the montagnard law can be revealed. Those that have been noted here are far from being the only ones.

/224 cont./

171 /footnote 1 continued/ express an exigency of internal equilibrium. But let us take this isolated rapprochement only for what it would be: merely the bait for more extended controls. (Cf. Archives of the Sénatus Consulte at Aris.)

128 These cross-checkings /225/ thus remain to be done. Only they will be able to infirm or confirm, and consequently to endow with generality or not, the structural law that it is believed has been uncovered here.

121 The "Parcellary Orchestration" (1)

[114] 1. This expression is taken up again, while apologizing for its paradoxical aspect, from the article of 1948, where we set forth our first verifications.

181 Let us return to the Seksawa of the high valleys.

423 Their whole life is marked by a very precise division bearing
613 on three orders of facts. The ground is divided into individualized quarters. Time is scanned by the succession of "turns" or-
[805] ganized for irrigation, and the latter is not only an essential
[312] economic base, but a collective symbol, fixing the most vehe-
[592] ment aspirations of these rural people. The group is divided into ikhs-s, themselves distributed in conjugal families, but preserving a role, or rather assuming attributions. There prevails among these three orders of things an exact correspondence.

182 Easily decipherable in the present state, and despite degradations
423 and mutations, it inspires and maintains the deportment of the
613 montagnard, for whom it is at the same time an inveterate or-
[671] ganization, guarantee of persistence, and ideal of legitimacy.
[421] The local land law in this part of the Atlas has no aim other than

182 /225 cont./
423 to safeguard, against all causes of disturbance, and against indi-
613 vidual life in general, these correlations.
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421 It is thus explained that, to the astonishment of the agrono-
mist, the order of irrigation is gentilitial. Contrary to what
423 economy of effort and the elementary concern to reduce losses
312 due to infiltration and evaporation would impose, it is not the
613 piece of terrain made up of an ensemble of contiguous parcels
that will profit from the turn for water, but the discontinuous
domain of an ikhs: as dispersed, as distant on occasion as its
fields may be, on that day the irrigation must skip over impor-
tant intervals in order to go from one to the other. This discon-
tinuity itself is the rule, because, in each of the quarters, each
ikhs must have its share. All sorts of conservative mechanisms
thereupon come to limit the possibilities of landed-property
mutations: sales or successions, /226/ violent dispossessions. In
the present state still, wherever the ground is flourishing, the
techniques well preserved, the commune lively, this rotation of
the water and this distribution of the parcels tend toward perfec-
tion. Whence it comes that the classic form of the property is
neither the ample piece lying together nor even the cluster of
neighboring fields, but a patrimonial sampling. The average
cultivator has a hundred parcels at his disposal, each of which is
sometimes reduced to a few square meters. The formula is not
viable from an economic point of view. But what does it matter
to the montagnard? He has, according to the expression of the
native documents, "his name in every quarter." A distributive
ideal is thus attained. It is also an ideal of variety. The parcels
are defined by their fitting in among those of others having rights.
The smallness of the areas helping, their limitation is not mate-
rial, but personal, not topographical, but anthroponymic. That
emerges clearly from local writings, where they are defined by
the name of the quarter and of the four borderers, without any
other precision of boundaries. The appurtenance to the ikhs and
the insertion in such and such a quarter provide sufficient identi-
fication. A paradoxical trait in a peasant society where boundary
conflicts are traditionally frequent.

/229 cont./

423 613 619 184 To what extent is a gentilitial distribution, in itself called upon to subdivide itself among foyers by a drawing of lots, practicable in the case where superficies, human forces, and water module assume a breadth more important than in the narrow canton? It then seems that a sort of dilation is imparted to the elements in the case. New subdivisions are intercalated between the basic subgroups and the individual: thus the three "thirds" of the a. H'adduyws, the binary rhythm of the a. Lh'sen, the localization by villages of the Idma "minor ikhs-s." All the more reason that it would appear among the Mez'ud'a, where a generous plains affluence presents something like a magnifying projection of the tribal structure. Apart from a certain order of grandeur, the notion of ikhs is lost /230/ as a basis of distribution. Then conventional divisions intervene, such as in Mez'ud'a the "centuries," myawat, which become the subjects [691] of law. And the law is ramified by degrees down to the "foyer," takat, but not without putting into play other measures of debit and of agricultural surface. That is all the more marked in Mez'ud'a, because beside such distributions for the water from the channels of the asif el-Mâl, the distribution of source water remains gentilitial. On the one hand, the solution of breadth, on the other, solution of narrowness. This coefficient of contraction or of dilation, of grain more or less loose or held together is essential for the interpretation of the facts. One realizes that by 619 the example of the Mez'ud'a. Again in this tribe it is a matter 634 of the harmonious enlargement of a taqbilt of traditional type, an 184 enlargement whose steps are to be read clearly in the present structures. More vast, more complex, and above all more instructive would be the Mtugga example, which covers an immense country and some thirty thousand souls. The ensemble is composed of several taqbilt-s substantial enough themselves to interpose one or two other levels of classification between them and the ikhs-s that compose them.

423 613 184 Thus the elements of the montagnard order: gentilitial division of the soil, vitality of the equilibrium among ikhs-s, parcellary orchestration, are subject to different fates as one

/239 cont./

000 correlative traits without doubt. The religious life of the Sek-
771 sawa has undoubtedly been hierarchized for a long time. At the
776 top, a national saint. Far below, a saint of more ordinary type, Sidi Mh'and of Ammern; accessit: Sidi Lah'sen of Assttif, recent historical personage; still lower the classic plebe of "good little saints." In rite, as in belief, vigorous centralization, but, by /240/ that itself, elimination, purification. The great majority of these plebeians of prayer remain without visage, without cult, indeed without name. Over the great ones is exercised a criticism which springs not only from the malice of the milieu or from problematical orthodox influences, but undoubtedly also from the imperious polarization of the system.

778 On the other hand, the nonfigurative sacred abounds. It has
782 as support, very often, these little village mosques from where, it is said, the prayer ascends directly to God, whereas in passing by way of its saints it risks hitting only the archangel Gabriel, Sidna Jebrir. The pious explanation leaves out the communal character of the sanctuary. But this character is very important, and very
779 likely the most ancient. On this level of local life traits of indivision are always observed among religious and juridical rites. In spite of so many external influences, and internal transformations, this is still in many respects one of the foundations of the life of the groups. Only, in religious matters, as in juridical matters, this narrowly local life is integrated into an ensemble which acts upon it at least as much as it acts upon it.

Situation of Seksawa Law in Relation to Its Neighbors

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[829]
[184] The Seksawa feel a fundamental difference between their law and that of their neighbors, like them old sedentary peoples of the western Haut-Atlas /High Atlas/, such as especially Idaw Mh'mud, Demsira, Dwiran, people of the Haut Asif el-Mâl and of the Aghbar. They fail to analyze it. In fact, their law fits into the Chleuh /Shluh/ ensemble. It stands out only by differences in detail. But they are vigorous and, so to speak, systematic.

/240 cont./

184 This immediate datum is thrust upon the observer as on the users. In addition, for the analysis, it will be the best of the bases of departure.

Admittedly, difficulty begins almost at once. For if one indeed sees the basic unity, contrasting with the vehemence of the personalities that stand out from it, the investigation fails to press the contrast harder. For example, we do not know the Gedmiwa, a group of antiquity as venerable as the Seksawa, well enough for the comparison between the two to go beyond the plane of simple description. It is not yet possible to define seriously the culture of this Moroccan South-West, which asserts itself by characters as tangible as the speech or the very figure of the inhabitant. It is not yet possible to state precisely or to explain how, out of this homogeneity, particularisms /241/ sufficiently lively for their exchanges to be ordered in relations of extemal law are articulated.

131 Here between the Lemgo, the Kattos, and the Atlasic arête
[133] is a mountainous quadrilateral some thirty kilometers on a side as the crow flies. At least four juridical identities are crowded there: Nfifa, Demsira, Dwiran, and Seksawa. And each one in turn is subdivided.

619 The consistency of the amerwas, "matrimonial gift," the
[585] effective force of coswearers imposed according to the gravity of
[691] a litigation go from simple to double if the litigants do not be-
[695] long to the same unit. Today the unit is the "tribe": Seksawa, Dwiran, etc. But this can also be, more authentically, what we
619 call the "fraction," that is, the taqbilt. And there are seven or
634 eight of them merely in Seksawa. Thus, in Demsira, the rate of
585 the amerwas varies according to four zones which apply the regime of exteriority to one another. In the case of a girl given
[184] to a Mtuggi, the chchard', stipulated marriage-settlement for the benefit of the bride, includes in certain taqbilt-s, and not in
619 others, the obligation for landed property. In land matters,
634 extracantonal testimony is not secured. Avowed reason: because
691 the foreigner could not be well informed. But, obviously, it is
[186] because the group prizes its juridical integrity. Between different
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184 /241 cont./ cantons complex rules govern the validity of the notarial writing itself. Thus, in Nfifa, only the act drawn up by native t't'olba or North Demsira or Mtugga is good. Otherwise it is no longer acceptable.

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184 Mechanism of cellular defense, one might say. And also diversified code of exchanges between cells. Legislating for itself, protected from its neighbors by invalidations, restrictions, or stipulations, surrounded by this type of armor that the doubling of the procedural rate constitutes, the group certainly, and although its law differs but little, poses as an individual.

184 It will thus be legitimate to speak of the Seksawa system, original part of the Chleuh /Shluh/ ensemble. And if it is still impossible, or merely premature, to define clearly the relations of this originality to the surrounding originalities or to the matter of the ensemble, one will not, for all that, let oneself be caught by this methodological grief that every investigator of the North African institution feels at first before the immensity of the tasks and the insufficiency of the materials.

/242/ Presence of Islam in the Law

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671 There is, moreover, a certain angle from which -- paradoxically enough, since indeed more ample -- the problem has been not only scrutinized by Islamic and European science (1),

1. One thinks especially of the studies of M. Morand, L. Milliot, R. Maunier, G.-H. Bousquet.

but experimentally felt, lived by the foreigner. It is that of the relations between such-and-such "customary law" and the Mussulman law. In fact, we believe, the political or cultural discordancy of the upper valleys is far from revealing any rupture in the moral or geographic continuity of the Maghrebi societies. The Mussulman law, acting everywhere, albeit unequally, on native factors, combines with them in a diversity that nevertheless is

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ordered by great masses: the Chleuh /Shluh/ bloc is one of these masses.

On the first problem, that of the acceptance of eastern norms, we lack sufficiently precise historical data. It is in fact a matter of an old evolution of at least a millennium, whose point of departure and principal stages escape us. At the most we are thereupon reduced to hypotheses on which one could not legitimately base the account. Therefore, it will be best to have recourse to observations from the present and from the immediate past.

Our juridical expansion in North Africa collided with that of another system, already anciently established -- and also which recovers with time an aggressive vigor -- the Mussulman law, or fiqh. The stake of the competition was and still is to provide the decisive part in the organization of the social relations and in the ethics of the Maghrebi man. But the rivals are not grappling only with each other. They have found before them, beneath them, more or less intact or degraded, more or less compact or scattered, the vestiges of indigenous laws, which it is conventional to put together under the generic appellation of "Berbère /Berber/ custom."

This is to say that this term of custom is not taken here in the strict sense that the jurists sometimes give it (2).

[114]

2. Cf. the Romano-canonical theory of custom and the masterly discussion of it done by Ed. Lambert, La fonction du droit civil comparé /The function of comparative civil law/, 1920, pp. 113 sq.

In many cases, in fact, this "custom" presents characteristics of rational cohesion, legislated expression, indeed even written codification, which are the very ones of the law. In fact, "custom," for the Maghreb, is the law of the predecessor and competitor. If the Mussulman cadi suppresses, /243/ in the domain of a custom that he will never recognize as normative,

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671 171 the whole ensemble of local law of an inspiration outside of or prior to Islam, the French magistrates of Algeria consider as a body of customs the ensemble of local laws, of Islamic origin or not, in contrast to the Civil Code. Did not one of our sociologists some twenty years ago entitle a work, and not one of the least ones: Loi française et coutume indigène en Algérie /French law and native custom in Algeria/ (1)?

1. R. Maunier, 1932, a book moreover picturesque and intuitive.

A second qualification is to be made concerning the term of "Berbère" /Berber/. The ubiquity of this local law, more or less even, makes very difficult its qualification as Arab or Berbère. The fact is that its most coherent expression appears especially in Berbérophone sectors, forming by that also a figure of reserves or of archeological evidence. Sectors which have constituted, for the Arabs as well as for us, both the most expressive sign and the extreme case of an autochthonous genius. A quite superficial view.

779 171 For Mussulman orthodoxy, the existence of the Berbères /Berbers/, and, with all the more reason, of a Berbère law, is an intolerable scandal. W. Marçais has acted justly to observe the very particular malevolence with which the geographer al-Yâqût stigmatizes, in the note that his dictionary devotes to them, "the singularity and the excess" of this race, h'ida wa t'aych (2).

2. Yâqût, Mu^{c}jam (1224), Wustenfeld ed., 1870, in the art. barbar., t. I, pp. 540 sq. He is struck by some aberrant aspects: ah'wâl ^{c}ajîba wa içt'ilâh'ât gharîba. W. Marçais observed that the entire note is of an unusual violence.

171 The last word, still living in dialectal Arabic, recovers the ancient notion hybris, "immoderation." Now many Eastern Bedouins

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171 are governed by a customary law, which, among the sedentary Yemenites, for example, is stated even in codifications bearing the singular name of t'aghût (3).

3. Ettore Rossi, "Il diritto consuetudinario delle tribù arabe del Yemen /The consuetudinary law of the Arab tribe of the Yemen/," Rivista degli Studi orientali, fasc. I-IV, 1938, describes a whole patriarchal and chivalrous society where interdictions protect the guest, the suppliant, the client, the refugee, the traveling companion, and up to the namesake. There are even some dissertations on the man^{c}, an idea related to the taboo. Some problems, such as that of the disinheriting of the woman, are posed simultaneously for this society and for those of North Africa, in relation to which it offers, moreover, a more archaic shading. The homogeneity of the problems and of the solution that is applied to them is nonetheless suggestive. After the description, already old, of P. Jaussen, E. Rossi's article constitutes a new and considerable contribution to the knowledge of an Arab customary law.

671 That way, even the juridical originality of the Moroccan mountains, to take an extreme case, could only, in the eyes of the orthodoxy, be absorbed in this theme of survivals or rural deviations, of this "eternal Bedouin," both nightmare and reason for being of the proselytism of the towns.

/244/ Certain traits of the Mussulman juridical technique must have contributed enormously to this unitary confusion (1).

1. On all this, see J. Berque, tr. of al-Wazzâni, Les Nawâzil al-Muzâra-^{c}a

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/footnote 1 continued/ du Mi^{c}yâr /The Nawâzil al-Muzâra-^{c}a of the Mi^{c}yâr/, 1940, pp 27 sq., and Essai sur la méthode juridique maghrébine /Essay on the Maghrebi juridical method/, 1944, pp. 33 sq.

First the concept of d'arûra, "necessity," and "law-making necessity," which allows absorbing, without derogation of principle, all resistant and aberrant facts, because one cannot master them, and without there being any question of penetrating their shell. Then, in the same sense, this Malekite opportunism imposing in the name of the "social good," maçlah'a, the acceptance of the illicit: but momentary, precarious and almost haughty. Finally the immoderate role of the presumptions in the penal and civil law has introduced, under the appellations of ^{c}orf and of ^{c}âda, "usage," a mass of local institutions, but, it goes without saying, without recognition of their character of internal obligation.

Consequently, the negation both instinctive and rational of the Berbère /Berber/ law by Islam is accompanied, in the juridical technique, by multiple means of absorbing it without admitting it. And not only without concession of legitimacy, but without an attempt at analysis. Consequently the Maghrebi reality has maintained the fiqh as an immense stock of facts without justification or depth.

For the strict orthodoxy, there is no problem of customary law.

000 Quite the contrary, the European exegesis, after long gropings in Algeria, and especially under the influence of institutional spontaneity, which it discovered in Kabylie /Kabylia/, then in Morocco, has let itself be dominated by a realism as unattackable, as long as it rests content with observation of the facts, as it is hazardous when it finds other inspirations. The joy of discovery has perhaps sometimes brought about a belief in a primitivism all the more malleable and assimilable as certain Mediterranean affinities "defended" it against the Orient: from there to the simplistic idea of division, there is only one step, which the system's detractors have not failed to make it cross.

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Let us proceed to the attitude of the user. Last, for this user is shy. He perseveres, certainly, but apologizes for it, or he does not even know himself. The two poles of this attitude are that he makes use of a superior system, which is Islam, fiqh included, and that concurrently he clings to a cantonal particularism, a sort of Proudhonian liberty which implies the preservation of his law.

It is only exceptionally that he rises to the discussion of /245/ principle. An account by the sheik an-Nâçirî (1)

> 1. An-Nâçirî, Ajwiba, ms of the zaouia of the Mez'ud'a, p. 42, l. 19 sq. The jurist is led to subtle distinctions on a community's degree of resistance to the law. "Question: a rural tribe resists legal norms, and replaces them with customary norms and penal tarifffications enacted through deliberation. It bases its justice on that. Does it incur the qualification of infidel? Answer: No, but simply of rebel. Objection: but then what is meant by the word of God: 'He who does not act according to the Revelation is an infidel'? Answer: 'That applies only to a tribe considered in its individuals.'" (He means doubtlessly a tribe that has manifested a deliberate initiative in this direction. The anecdote of the ait Asawn in fact follows: those may be qualified as infidels.) One sees that the Chleuh /Shluh/ jurists have sometimes been forced to approach the problem.

shows us a tribe of the Sous, the ait Asawn, symbolic in the name perhaps ("those of the escarpment"), who "bury" the Mussulman Law according to the classical mode of spell, and proclaiming the henceforth obligatory recourse to the "tables" of the ikchchud'en custom, that is, to local codifications. But that is only an extreme case.

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extreme case. The fatwa /futwa/ of the Idaw Zeddut (2)

2. J. Lafond, Les sources du droit coutumier dans le Sous /The sources of customary law in the Sous/, 1948, p. 18.

in the same region, on the other hand, justifies the application of custom as auxiliary source of the law by reference to the same orthodox norms as a jurisconsult of Fès /Fez/, al-Qâdirî, justifying the ᶜAmal, this pragmatic law that developed in the urban law courts. But neither al-Qâdirî nor the Chleuh /Shluh/ jurists fear the innovation, or at least confess it. Moreover, how would they draw the line between deviation and adaptation? In the Orient, as in Morocco, the classical procedure of judicial subterfuges, al-h'iyal, has developed an immense thicket of subtleties where the part of the one and of the other is sometimes indiscernible.

One may observe here and there, I believe, that the dosage, moreover diversified, but present everywhere, between religious law and customary norms has sometimes taken relatively conscious and deliberate forms. And, in the same proportion, that takes away this Berbère /Berber/ primitivism, sometimes the object of overly naïve European enthusiasms (3).

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3. Recourse to a criterion of primitivism for classifying the different "Berbère" juridical systems of North Africa seems to us to have excessively marked the rich works of G. Marcy, "Les caractères généraux du droit coutumier berbère /General characteristics of the Berber customary law/," CHEAM, pp. 4 sq., and especially Le droit coutumier Zemmour /Zemmour customary law/, 1949, pp. 360 sq.

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In any case, this is what forms the originality of the Sous and the Mzab (4).

4. On this aspect of Mzabite law, L. Milliot, "Recueil de délibérations des djemâas du Mzab /Collection of deliberations of the djemâas of the Mzab/," R. E. I., 1930, p. 223.

But everywhere one finds this double character of Islamic option and cantonal conservatism. Whether it is transactional or, more rarely, insurrectional, the local law has always and everywhere reckoned with the fiqh, has set itself in comparison with the fiqh, indeed sometimes has pretended to be absorbed in it, or believed it.

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/246/ Islam and Individual Belief

From the innermost subjectivity of the Chleuh /Shluh/, whose Islamic option is profound and ever bursting forth, to the most well-considered social affirmation -- this society wills itself Mussulman. In its great epochs it sought to be the Mussulman society. We find the Prophet everywhere. It is for this reason that it is so difficult to determine his part: it would not be if it were not total, or, more exactly, if it did not will itself, if it did not feel total. Such in fact must be the lot of a universalist faith. As a permanent appeal to the profession of the Unique, to the imitation of His noble witness, the Messenger of God, as a cultural and ethical system, it inspires and governs the soul of the person and that of the people: it has become an essential trait of the country. It would be a fine subtlety to distinguish in as specific a synthesis the part that, of an order properly institutional and of oriental color, has been, not rejected, but eluded by the societies of the Atlas, or adapted and assimilated by them. Nevertheless, in the realm of the law, one can circumscribe the indigenous legacy and the oriental contribution. Concerning the belief, the

[Ait H'adduyws]

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776 778 c) Three mosques particularly armed with powers, and presenting along with that of Ifesfas, which has been mentioned above, the common character /260/ of being built outside a village: perhaps a trace of rites putting the taqbilt more directly into play. Thus, the timezgida Wissil of Uzaga, the t. Wuzir of Tinerghat, the Sidi Ljâmâ of Alus. One is to note this last name marking a sort of intermediary stage between two orders of ideas: it is a "Saint-the-Mosque";

d) Twenty-one "village mosques."

This would be a total of 34 ritual places, among which only 4 are amenable to a personal hagiology. Not even one in eight!

[162] [613] The a. H'adduyws number some 2,700 inhabitants, divided into some thirty ikhs-s. It should be noted that the a. Khaled and the a. Ggahi of Tasa have for ancestors the two Yah'ya, whose tombs are shown and on the subject of whom the rudiments of a legend are told. They are not saints, however. And, moreover, these stories of ancestors are quite exceptional.

121 128 778 It would be a wager to pursue this quantitative approach to the sacred in Seksawa. It necessarily omits nuances and suffers from multiple sources of imprecision or error. It was attempted, after all, only from a reaction against the descriptive excesses, the generalizing samplings of a certain sociology.

776 778 [162] Nevertheless let us confront the results obtained: The sample dealt with 8 or 9 cantons, a. H'adduyws, I. Geryun, Imt'ddan, a. Lh'sen, Ibuban, Sekrat, Iguntar, a. Musa, that is, a total population of about 8,000 souls. For about a hundred ritual places, one counts less than ten saints with personal figure, a great majority of anonymous, indeterminate ones. And one verifies the predominant part of the "sacred of timezgida," where it is undoubtedly legitimate to see a communal sacred.

779 346 671 Now if one bears in mind that, even at present, this timezgida remains par excellence the place of the life of the group, one finds that an important part of the law of these societies can

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779 346 671 be understood on a level of indistinction or of solidarity between religious and juridical practices. Under that is glimpsed another level, still more profound, and which certain attitudes, certain proceedings reveal.

The Immediate law

773 627 /The following paragraph is in small type in the original source./ The oath is the golden settlement, lfçal uwergh, say the a. Lh'sen. It is the sin of men, their obstinacy in lying that have limited its role. In former times a chain hung from the sky to the earth. It sufficed to touch it in taking an oath in order for all to be settled. But one day a debtor of bad faith hid the disputed sum inside a /261/ reed which he had his creditor hold, while he himself, touching the chain, swore that he had paid his debt. The chain immediately ascended to the sky, as punishment for the deception.

627 That is very precisely a myth. It is not because of its coincidence with a scene from Don Quichotte /Don Quixote/ that we cite it, but because of the remarkable distinction that it suggests between a stage of sworn law, with religious character and immediate sanction, and the present stage, which is that of the proceedings. It is also necessary to rectify on two points its interpretation of the first stage, which is perhaps not the most archaic. Gestures, objects with still more immediate juridical value, are disclosed, vestiges undoubtedly, but still quite alive, in the bosom of the present system (1).

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1. Nothing abnormal in that on the plane of comparativism. This stage is found in very ancient Roman law, the beginnings of Greek law, the old Israelite law (story of Moses and Jethro). The affair is settled immediately by recourse to the oath, extispicy, auguries, etc. Elements of this state of things

/338 cont./

613 the occasion of plural oaths, it is the most closely drawn circle of agnates that is invited to confer on the litigant its balance /Fr. 613 appoint/. Conservative mechanisms, such as the chchfâa or the 423 habous /wakf/, are applied to maintain or re-establish a patrimonial immutability, less familial in the narrow sense than gentilitial, against any land alienation or leasing. The /339/ ancient act to which one party, the açl, will allege an exception, and which has the more worth as it becomes older, many times consists of a simple unilateral affirmation of the land rights of the ancestor. The genealogical tree, chchajara, and the successoral distribution, lmirath, archival documents manifesting the agnatic continuity, play a decisive role in the proceedings. An instinct for reconstitution stands in opposition to the dispersive force of inheritances and personal enterprise. Between rich cousin and poor cousins, it animates and obscurely justifies these takings and retakings that tradition and opinion liken less to usurpation than to escheat or a sort of permanent revenge between rightful co-claimants. This alone justifies and authorizes the existence of a gentilitial agrarian order.

613 All the effort of the jurisprudence, were it that of the great 671 cadis of the Sous, has been dedicated to serving rather than amending this situation. It is that the ikhs thrust itself, with all its attachments of public law, upon the private law. Conjugal foyers on the one side, city on the other are pendant, one might say, on the two sides of the ikhs. In it is their point of junction, on each side of which profoundly different social rhythms reign. On the one side kinship and alliance, justiciable to the memory of the living, and finding their practical application in each successoral dispute. This is the reign of the writing. On the other side, larger and larger classifications are drawn up in echelon from the ikhs to the smallest political unit, the taqbilt, and from there perhaps to the great legendary divisions of North Africa: Maçmûda, Zenâta, etc. There the reign of unwritten law begins.

At the antipode of this gentilitial life, here is the individual person. Not only is it the single subject in the eyes of the law,

/339 cont./

613 671 but the displays or the subterfuges that the old Chleuh /Shluh/ procedure has been prodigal with to maintain against it something of the old solidarities are in sum only a trifle in comparison with the primacy that it holds for the mores. One will see this notably in the matter of the division of acquests and of matrimonial customs. In both cases, the "patriarchal" and statutory character gives way to an individual and contractual character more pronounced than any analogous one that can be observed in the alleged Islamic model. In this matter the Chleuh /Shluh/ system goes beyond the fiqh. The influence of the gentilitial organizations, although combated by orthodoxy, its notariate and its conception of personal rights, could resist them, but not prevail over a powerful local tradition, that of egalitarian computation between conjoints, parents and children. These three influences have nevertheless interfered, and all three are to be found, although to unequal degrees, in the different sectors of the familial institution.

/340/ Morphology of Marriage in Seksawa

584 [796] Each year, at the feast of the Mīlād, young men and young women from the surroundings stream to the holy place of Z'init'. The attraction is exerted as far as in Mentaga to the S., up to the ʿAbda to the N. It is the market for wives. Couples, who only rarely ask for the parents' approval, form according to their sympathies. In certain cases, however, the fiancée "presents" her fiancé to her family, which goes to accompany him home. Most often, it is necessary to say, the unions have nothing at all that [796] could satisfy the moralist. "But," as an amghar of the Seksawa told me, "one must believe that the saint delights in it, for her [798] baraka guarantees the prosperity of these marriages and makes up for the sometimes considerable delays of the usual betrothals." [582] This market for girls, especially dear to the plains Arab wooers who come here to choose a montagnard woman to their liking, has lasting fruits. The single village of Z'init' has at the present time three of its women who have married sanctimoniously into the single H'mer tribe.

/348 cont./
613 though encircled, stubbornness goaded by scruples scarcely have an analogue elsewhere in North Africa.

613 The agnatic law in fact among the Seksawa collides not only
709 with the Mussulman adherence, but with the notarial genre. No
178 part of their system is dominated more by the fiqh, that is to say,
671 in this case by the formularies. That is to be understood from the writing's having come, with its prestige, to support and at the same time to distort the memory of the group. Whence a very curious technological richness: under the names of tenzil, istirkab, assyas, tarikt, tabanni, waçiyya, ccadaqa, is refined and specified, but always in terms of the writing, a juridical personality that, in the matter of matrimonial law, as has been seen, was always able to remain exorbitant of abstract schemata. Nothing surprising in this contrast. In the adaptation to the fiqh, this part of the system, out of lack or perhaps out of excess of original substance, has shown more resistance and at the same time more docility than the rest.

613 More docility, vulnerability, because the development of the act, portative justification, individual weapon, mobilizable property, found in the contractual sense of the milieu an unheard-of adjuvant. By that it easily outweighed all the other mnemonic methods and benefited from the overwhelming superiority that writing manifested when it was a matter of fixing a time, a name, a circumstance. But more resistance also, for the permanence of the ikhs, the profound accent of its life remain inseparable from its material support, inconceivable without its articulation with the /349/ agrarian structures and, more broadly, with the physical and moral rhythms of these societies. This point has already been studied. We shall return to it in the chapter devoted to the landed-property law, apropos institutions such as the habous /wakf/ and the ccadaqa.

178 Thus, since the generalization of writing in the Atlas during the sixteenth century, a divergent evolution has been produced, separating from each other, at the very least in the mode of expression, the two faces of the local genius. It has sharpened, by a technique incessantly more active, fortified by a mass of

/349 cont./

178 archives incessantly more abundant, instincts of litigious individualism. It has driven back into the background, on the other hand, although without abolishing the force of them, these landowner bases of the family that link it by degrees to the great classificatory entities of the country. Such a rupture was serious. Generator of deeper and deeper conflicts, it will end up being fatal for the local personality. It has not yet been so for the Seksawa family, at least where no external factor has come, as in a. Abdella, to make the forces of breakup prevail.

212 But everything has become a notarial affair. The village
671 t'taleb, with functions quite laden with communal virtue, it is
178 true, has become the artisan and, in certain respects, the arbiter
[538] of the juridical permanence of the group. The continuity of the latter in time has certainly lost in part original modes of expression such as — one can at least imagine it — the heroic legend or choral poetry. It is no longer expressed except under the abstract schemata of the act, of the formulary. But it has brought to it its competitive fervor and its sense of olden times. To the point that these acts have proliferated immensely, the mountains have become a library of charters, and all this literature has even known there a historical density inconceivable in the Morocco of the plains, or the so-called cities of written law.

613 How distorting a mode of expression! Of itself it caused the
671 essential to escape. By law of genre, it transposed and mutilated what it allowed to pass. Of the two faces of the familial law, the one that concerns the group and the land, on the one hand, the one that concerns the contentious individuals, on the other hand, only the second could thus show through, and yet at the price of
613 stylizations. However that may be, and with these reservations,
671 such archives can restore, across several centuries, the permanence of families. It is thus that the name of the principal ikhs-s
178 and their disposition, still present, appear throughout the last four centuries in the acts called inçâf, "repressive tariffication," but in which we can already observe that they express a right, not gentilitial, but communal.

613 175 [623] /350/ /The following paragraph is in small type in the original source./ Here is an act of 1168 Heg.: 1755. It concerns the jemâa of Ad'erdur (Idma). It specifies the ikhs of each of the personages mentioned: A. Abbû, a. Ikru, a. Ighechchi (today: a. Dris), a. Arbâi (today Ichâwiyin), Azarra (disappeared), a. Bjikko (disappeared), a. Bajja. That is, 8 ikhs-s as opposed to only 6 today, among which one finds the a. Ikru, a. Uchâwi, a. Dris, a. Bakkin. Two have disappeared. Others have dissolved and are no longer counted as ikhs-s. The laws of these evolutions would merit a monographic analysis, which cannot be undertaken here. Roughly, these ikhs-s, each of which furnished an assistant for the chief of the village, are still the same as in our day. Examples of such permanence, unheard of with regard to the incertitudes of the Morocco of the plains, would be indefinitely renewable.

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594 671 It is true that there we are fully in public law. The atmosphere is quite different as soon as one passes to acts concerning the conjugal family: and the latter is alone to appear here either at the moment of its constitution by marriage or on the occasion of all the acts implying its exercise or its perpetuation.

597 671 [191] "Adoption," assyas, tabannî, constitutes a first divergence with the orthodox system. One thus sees crop up on the plane of sworn law a form that elsewhere in North Africa has remained on that of suppletory custom (1).

1. Cf. G.-H. Bousquet and R.-P. Demeerseman, "L'adoption dans la famille tunisienne /Adoption in the Tunisian family/," R. afr., 1937.

It is nevertheless rare in Seksawa, and these lateral modes of augmentation of the family are far from assuming there the same importance as elsewhere. The strict adaptation to the fiqh has eliminated here the interferences between the pacts of work or of alliance and filiation, so characteristic of the Moyen /Middle/ Atlas. An effect, let us say, of "acculturation." The Seksawa system diverges from the fiqh on another point. One knows that in the latter representation does not exist. Trace perhaps of an

597 671 [428] /350 cont./ Trace perhaps of an old principle of magical continuity: the succession is broken by the lack of a link: the grandson does not inherit from the grandfather if the latter has survived the father. In the orthodoxy itself diverse subterfuges have obviated the rigor of this principle. But they have known limitations to which the Seksawa system was not bound any more than its recourse to "substitution," tenzîl, istirkâb, remained in the statistically restricted proportions of the Mussulman institution. But the true problem was elsewhere.

593 671 [881] The great event of the Seksawa family is the arrival of the child, boy or girl, at nubility, which makes him a co-operator. Questions are then found posed, which are all resolved, a remarkable thing, in a spirit, not of patriarchal indivision, but of /351/ accountancy. In effect, filiation creates rights at the same time as it does parents, and indeed beyond the mere capacity to inherit.

593 421 First, a right to benefit from the familial society, and from the share of acquests proceeding from it; over and above this, for the daughter, there is the right to the "dotal marriage settlement," jihaz, to the "trousseau," aruku, at the time of marriage, to maintenance in case of widowhood or need. The son's economic autonomy is accentuated again by the practice of seasonal or permanent emigration. Finally, the separation of the goods, separation of usufruct and administration at the very least, is frequently obtained by the children even during the lifetime of the father. The act then takes the form of a habous, of a ṣṣadaqa or of a waṣiyya. It is an anticipated testament in which often figures the strange stipulation by the constituent of a reserve for his benefit, which seems to imply immediate disseizin of the rest.

593 421 175 /The following two paragraphs are in small type in the original source./ Thus in 1028 Heg.: 1619, at Alus, in Idaw Geryun, a fiqh /sic/ of the a. Umgan and his wife make a donation, ṣadaqa, to their grandchildren, of a property from which they exclude a "margin": the parcel of Taglagelt.

Again at Alus, an act of 1061 Heg.: 1651 describes the distribution of a patrimony among brothers. They operate with all the guarantees of technique and equity: "full agreement,

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593 generation, like new sediments, humble advances that the labor
421 of man realizes, such is the peasant ideal that this classic form of the proceedings reveals. Primus brings against Secundus a chchfâa resulting from the existence of a habous set up by his great-grandfather. The purchase consented to by the father of Primus, which Secundus is referring to, is then null. But Secundus demonstrates that the foundation only dealt with an area far smaller than the landed property now claimed and that such-and-such extensions were realized, after the habous, by the grandfather and the father. The discussion is then oriented toward verifications of the civil state of the parcels by the production of old "nominative inventories," jrida.

613 The division of labor between these familial co-operators
423 coincides most often with a landed-property indivision that may branch out, over the lapse of several generations, indeed over the whole history of an ikhs, into monstrous juridical arborescences.
[428] The woman inheriting, in principle, on the pattern of the fiqh, the minors and incompetents are then found most often enlisted in vast agnatic solidarities, whose abuses find a corrective in the insecurity of established situations, imprescriptibility of rights, and criticism of origin to which this milieu untiringly delivers any possessions. Here again a sort of equilibrium at term is realized. In time it is true: and several generations sometimes pass before there is recovery. The disappearance of such-and-such individuals, of such-and-such families, by "extinction," for example, inqirâd', a theme that recurs quite often in the old acts, is not free from ending in the constitution of a certain margin of "goods without master," closely inventoried moreover in the consciousness of the group, and which, tacitly, are the appanage of the powerful of the day. Premium for individual appetites, and rudiment of a domainal one.

613 Thus individual depredation and communal constraint encircle
671 the life of the ikhs. The modern law of the Seksawa has perhaps made out of the exuberance relations of action and of reaction established, on both sides of the ikhs, by these two rivals. Doubtlessly the gentilitial structure, evoked by unwritten laws of the

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671 agrarian order, has survived up to us. But on the juridical plane, it has finally suffered, more than the group, from the invasion of the notarial writing. And its contest with the economic chances of the individual still endures, and becomes bitter. If it were ever able — a stage /353/ quite hypothetical — to preside over a form of this society where everything agreed harmoniously around it, ritual autonomy of the patriarchal family, hagiology of ancestors, law of agnatic type, that collapsed long since. One has [178] the impression that for four centuries at least, in the place of what one can imagine of the ancient ikhs, the society has been undone or, more exactly, redone (1).

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1. These reactions of the group to the gens, sometimes by legislative means, are known in classical Antiquity, where they constitute in short the essential of "reforms" that intervene here and there. Durkheim has profoundly noted it, Ann. soc., t. VI, pp. 324 sq., 373 sq., apropos the Athenian genè and phylaI. We shall return to this idea in our conclusions.

/354/ Land Law

Double Character of This Law

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[128] The maintenance of the agnatic group in its landed position will be the central motif of this chapter. But a total liberty of landed-property operations surrounds this motif with a fringe of lesser application or even of contradiction. In extreme cases
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181 mobilization and alienation of the land intervene, and put in play a passionate contractual individualism. This is an important theme of these societies. It interferes with the one, no less important, of communitarian permanence. Both react constantly with each other. Hence contrasts and antitheses, at which a superficial view might stop, but we shall try to see if their

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175 of it for the saints of the Seksawa, such as Lalla Aziza and the
423 H'ançaliyin, in conformity with ancestral usage. He planted it
425 with trees and sowed it with cereals, and surrounded it with an enclosure," etc.

Much farther upstream, at Rekto Wasif, in 1011 Heg.: 1603, a cultivator required evidence that he had exercised usufruct over a piece of land "from the time of the sherif." The witness attests "to have participated in a twiza of fertilizer and other practices of tillage and harvest with the Ait Wasif."

423 But possession will never hold against the right of origin, the
671 basic legitimacy, açl. The fact is important enough to be the
171 object of deliberations and even of codifications. In effect it runs directly counter to Mussulman law. This conflict between the master and the disciple is striking. Indeed, despite the moral exigencies that bring it closer to our canonical law in its criticism of the vices of usurpation, violence, and even of precariousness, the Mussulman law causes to intervene the notion of a duration whose prolongation entails juridically the purge of these vices and constitutes in the long run the title of ownership. Moreover, its litigious and technical nature, making it confuse the right and its proof in most of the cases, leads it to confer upon the possessor the advantageous qualification of defendant, which very often will end the proceedings in his favor with a simple swearing of an oath. Nothing more remote from the Seksawa custom, where the burden of proof devolves on the possessor, and which is ignorant of any legitimating effect of duration.

423 Applied to the letter, the preponderance conferred on the
671 written title, by a technique so imperfect and offering so little in guarantees of authenticity, over ancient possession apparently leads to the worst of hazards. In fact, the "legitimation" of
(613) which the documents speak is the notoriety of the group attaching such revendication to the well-known patrimony of the ikhs. This genealogical consciousness of the group, tied to the structure of the ground, is what must be referred to in order to give an account of the customary rule of action that has become incomprehensible beneath its cloak of written law. Deliberations of this sort,

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423 denying any value to possession, have been /358/ found in Imt'd-
671 dan and in Idma. I have given elsewhere (1)

1. "Documents anciens sur la coutume immobilière des Seksawa /Ancient documents on the landed-property customs of the Seksawa/," R. afr., 1948, pp. 386 sq.

the text and the translation of the second of these documents, which it seems useful to reproduce, as much for its basic interest as for an illustration of the singular disposition of these groups to legislate.

175 /The following six paragraphs are in small print in the orig-
423 inal source./ Copy (1348) of an act of rabīᶜ nabawī 1266 Heg.:
671 1870. Be it known by these presents that in the custom of the Idma country there can be no rights drawn from possession. The latter, even prolonged, does not constitute valid title.

It is only if the titulary of the possession establishes its origin: how the right to the property passed to him, and the proof of his entering into possession by sale, redemption, donation, inheritance, that his possession will be valid. The party arguing faulty sales, or redemption, will again claim his title, and the original right will return to its origin.

Consequently, possession legally requires from the one who argues for it a legitimation. But if the origin that it invokes was reduced to nothing, the possessor would be no more than a usurper in our country. If not, not.

That is what we hold in all certitude from our past ancestors, and what they have written in our acts anciently and successively.

Still today, whosoever does not produce his origin, his possession depends on the pillaging of the goods of orphans, and on the iniquity due to the fact that in an unruly country the weak one does not obtain his rights (2).

2. Fine trait of what a modern school would call a feeling "of alterity"!

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175 423 671 It is for this reason that the tribe has agreed upon this point, thus cutting short contestations opposed to past or future revendication.

This hostility to a right drawn from possession, that is, let us take care, to ownership, whenever it does not agree with the gentilitial distribution of the ground, is not new. A judgment of 991 Heg.: 1583 (a. D'alh'a) is based on the consideration that "these claims given out on faith from possession are vain and can be heard no more than the void." At this time, the generalization of the notarial writing being quite recent, it is not very probable that the açl was necessarily an act. One is thus led to suppose for this period means of proof other than the production of writing. Recourse to a sacramental procedure, to sworn law or to such a manifestation by the group? It is probable that the notarial [177] method was literally snatched up by the needs of the Chleuh /Shluh/ society, which, in this matter as in others, surpassed and overwhelmed, according to its own ends, the prototype from the fiqh.

/359/ Former Form Poorly Normalized: the "rrahn"

425 This procedural rule found its keenest necessity in the existence of an institution that combines stability and mobilization of the patrimony. I mean the rrahn (1).

1. On the Berbère /Berber/ rrahn, cf., besides our afore-mentioned article on al-Abbâsî, notes at §§12 and 14, with quotations from al-Bakrî, from the Istiqçâ', and from the Manâqib al-H'ud'aykî on the history of this form in the Sous and the Atlas, see as-Suktânî, Ajwiba, ms. from the zaouia of the Ud^{c}Abdalmawlâ, pp. 80 b sq. Among the European authors, cf. especially, besides the fine study on the Kabyle rahn by H.-L., Kabylie... /Kabylia.../, t. II, pp. 534 sq.; G.

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/footnote 1 continued/ on the one side, a. Tunert, I. i-yzimmer, Irohalen; on the other, Ichkajjen, a. Dris.

against which the Seksawa are directly backed (a. Tunert, I. i-yzimmer, Irohalen), it is the totality of goods that is obligatorily "haboused": hence inalienability and disinheritance of women extending to the ensemble of the ground. Elsewhere it is a matter of a simple faculty, but so laid under contribution in the mountains of Imintanout that at the same period the proportion of habous was evaluated at two fifths of the tillable land. Twenty-five years ago the judiciary jemâa of the Demsira even expressed the wish that one half of all contested landed-property should be considered habous. This practice has not been retained. But it prevails in [671] Haut /Upper/ Gedmiwa under the name of taûqît (2).

2. But nothing may be concluded with certainty, the customary law of the Aghbar seeming to have undergone recent evolutions of an administrative order that have accentuated its imprecision. It appears to us today, much more than the Seksawa law, to be a "patoisant" /speaking with a provincial accent/ law, whether this character be ancient or acquired.

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On the other hand, scarcely any habous in Bas /Lower/ Seksawa, downstream from the confluence of the asif n-a. Lh'sen. A [691] foundation of the protégé of Brives, Ah'med ou Bihi, at Tuz'z'umt, was regarded as an anomaly and gave rise to a long lawsuit: it is true that the wife of the founder was a foreigner from the Mtugga. [1777] Even lower, in the plain, permeable to outside influences, this form concerns, as in Arab countries, only a minority of "great families." It doubtlessly then finds the alibi of its pious intention. On the contrary, it is so frequent in the mountains that it is presumed of all land. But the customary judge opposes to this

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794 428 In spite of these endeavors of the doctrine to reconcile the theory of pious affectation with a very different practice, the Seksawa habous is nothing other than an "agnatic sequestration." It does not even allege the intention of piety and sets itself up as pure testamentary modality. An incertitude has always marked it with respect to its effect upon inalienability: is the latter pleadable by the lessor himself or his beneficiaries? Can a convention of the latter at a given moment revoke it, in which case the woman's portions, originally ejected, would be claimed again on the mass? Seksawa jurisprudence is not closed on all 794 428 these points. It is even interesting to note that this incertitude anciently provoked a legislating initiative.

• 671 An undated document of the I. Geryun subordinates the inalienability of the habous to the absence of a contrary stipulation of the constituent. In 1287 Heg.: 1832 seven elders of the Bas /Lower/ Seksawa ordained that the consistence of the margin, lh'âchit, left for the benefit of the daughters will be one half of the fruits of the foundation, the other half returning to the habous. In this fruit is also included the product of sales, pledged loans, etc. "Such is the custom of the Deren and of the Dir," they solemnly added. But from all evidence such legislation aggravated the incertitude of this habous, which seems, to /365/ speak truthfully, not to have properly any content, except to open a recourse for the male heir against the woman, and especially for the descendant against the foreign acquirer. The right is identified here with the action, and it is probable that it is necessary to rank this habous and the chchfâa that threatens it among these procedural resources with an effect based upon surprise and feint, and whose role is so important in the unfolding of the litigation.

794 428 634 The statistics of the habous in the mountain tribes would be quite interesting. Some twenty years ago, one of our officers noted that in three Idaw Mh'mud cantons (1),

1. Lieutenant Combe, in Les Hâbous de famille en Ida ou Mahmoud /The family habous in Ida ou Mahmoud/, 1932. He distinguishes two groups:

794 /365 cont./ But the customary judge opposes to this
428 exception /plea/ the necessity of establishing by "inventory,"
(695) jrida, the initial consistence of the properties on which the foundation bears. He opposes to it also — but since when? — the argument of peaceable possession exercised by the defendant, if nevertheless the claimant or his creators were present in the country. Obviously no conclusion can be drawn from these /366/
[177] practices. There are mixed together here preoccupations of equity
[178] inspired by the French advisor, a concept of decennial prescription borrowed from the fiqh, and a general tendency toward the consolidation of acquired rights. So many recent evolutions.

12 This geographic distribution perhaps marks different stages of
794 the institution. In this hypothesis, the "purest" one would be found upstream, and especially in these three I. Mh'mud cantons where the land is entirely immobilized. It is possible that that would be the original stage. But if it is, it is necessary to recognize that the parties' freedom, by a curious paradox, went further in the matter than the fiqh wished. At least among the Seksawa an express convention of the devolutionaries can free the landed property. Is that a matter of an eventuality more theoretical than effective? This is impossible to specify. In fact, as is known, the settlement of landed-property affairs took place "under the sign" of the fiqh and in any case in a climate completely different from that of the conflict. Therefore no jurisprudence that was not
[173] suspect of transposition at the very least. As for the oral tradition, today very much impaired by the progressive disappearance of the old people, and the influence of recent organizations, it becomes very subject to caution as soon as the problem becomes nuanced. It is too stuttering for one to be able to base anything precise on it.

794 One thing is sure, however. These foundations are subordi-
428 nated to the stipulation of a "reserve" or "margin," lh'achit, to
67 which the habous does not apply. This portion of the landed
[562] property remains subject to the common law. The women benefit
[184] from it, either by having it available as property or by only enjoying the usufruct. On these points the variety is very great between taqbilt-s and expresses complex evolutions. Nevertheless, and in all cases, the absence of lh'achit is a nullity. In a milieu as bereft of precision concerning the notarial practice, one weighs what this formalist rule will bring in the way of surprises in the course of proceedings. Quite often this unforseen new thing will

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794 428 671 decide the litigation from a point on the whole secondary, like a feint in a joust.

That is a new chance opened up to the adversaries of the habous, a new possibility of play, anything but negligible in the spirit of the system. But what accumulated risks! The landed-property procedure of the Seksawa recalls the shows in which a [423] player must guide his ball through a multitude of snares and traps to a very chancy issue. This issue, in the case at hand, is the alienation of the land. And although it results from possibilities opened up by the orthodox law, which one professes /367/ to follow, and by the very form of juridical expression, one divines at what point it remains improbable, and doubtful even in success.

General View of the Familial and Landed-Property Law

121 If one now groups the most striking aspects of the system, one will realize that it is the triumph of Homo oeconomicus. Of the rite and the tool, to return to the two antithetical notions from which, for a Moroccan society moreover very different, Azemmour, the late Ch. Le Coeur drew his inspiration, it is by far the second that occupies the foreground here. One might even say the tool in the proper sense: namely, the peasant's hoe, this agelzim that sculpts the tiers, distributes the water, inscribes, in gains of a few square meters, the patient work of generations, fashions this rural landscape, which is the most made that North Africa knows. Workman's landscape...

121 671 But this impression is modified somewhat if one leaves the domain of the law that is conscious, avowed, marked by its successoral schematism, its litigious tricks concerning goods, its ratiocinations concerning household life, in order to examine its relations with the agrarian order. At this level-a ceremonial commentary, a sentimental context envelop words and gestures. Agnatic solidarity appears as one of the active bases of the life 121 of the canton. But what remains of this structure once past the 671 threshold of judiciary debate, which is also the threshold of the 212

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121 writing? Truthfully, few things. An entire gentilitial culture
671 seems to have been jeopardized here. The writing has gone that
212 way. Writing of another language, minority, professional, tending to be secret. It carried with it a sentimental pedantry, a doctrinal propaganda, and a notarial technique. It did not remain a
121 means, but became a master. The whole matter of successoral
671 law was profoundly transformed by it. Matrimonial law resisted
212 better. It in fact kept, thoroughly colored by rite, a stronger
178 originality than the former, which imperious acquisitive instincts dominate. The intensity of emotion, moreover, was not the same in the two domains. Paroxysm of the moment in the one, continuity in the other. Resistance had to be unequal. Festivity on the one side, duration on the other. The notarial language, powerless to deform the festivity, tyrannously lent itself to long peasant perseverances. It governed the secular courses of them.

121 But on this side of the stage of expression, the communal
671 peace was strongly maintained, or re-established underneath, in
[423] the order /368/ of irrigation, the parcellary orchestration. One thus arrives at the paradox that the land economy, controlled above all by prelaw survivals, unconscious imperatives, but perhaps also by deliberate initiative of the group, is expressed only indirectly in the contentious multiplicity of the title. The essential of this life: agonistic vehemence, tension with alternating re-establishments, patrimonial continuity, sentiment of the legitimacy, passes through the acts rather than being expressed by them. Juridical subterfuge, procedural stratagems, an element of surprise and something like a certain cult of the absurd menace the constructions of the writing. And that indeed provokes disturbances, arouses many scruples. But they remain in profundity. The notarial language has covered everything. Its mysterious prestige and its malices have beguiled both the coolness and the duplicity of this peasant. For this peasant has found his boon there. More and more he will find it there, as by a sort of compensation, and to the extent that the judicial debate casts off its antique character. The reaction of the group will not always succeed in winning out over the forces of breakup. Then it will all be over for the montagnard institution.

175 /373 cont./
685 "Note," taqyîd, of the fine imposed by the moqaddem of the
683 Idmà on an individual who stole some almonds, and whose
[634] brothers cursed the one robbed, yal^{c}anû bi-kathrat il-qabîh': 10 m. for the thief and for each insulter. Without date.

175 Therefore, to be content with what can be restored by the
671 existing documentary sources, and even taking into account transpositions inherent in the writing, one is struck by the publicist and regulatory character of this penal law. To what extent this character has prevailed over familial autonomy will be shown by the following texts.

175 /374/ /The following three paragraphs are in small type in
685 the original source./ In 1267 Heg.: 1851 the Idaw Geryun
[619] decreed that an insolvent thief must be executed by his agnates.
[634] The latter must put him to death. If they do not resolve to do this, they must release him from his fine at their own expense. The jemâa frees the agents of this execution from any payment of dîâ!

In 1276 Heg.: 1860 the a. Tasa condemned one among them to death for robbery. He was therefore executed. "But not at all by the hand of one alone, but by that of all, and without dîâ, fine or exile, being incumbent on anyone."

There still exist in Haut Seksawa old men who remember
[613] deaths of this sort. The executioner is sometimes the agnatic group,
[634] sometimes the taqbilt, or rather a subdivision of the latter, the
[619] "third," thelth.

671 In these cases at hand, the primacy of the group and of the
681 justice that it renders is curiously reconciled with an archaic concern for immunity. Penalty of public order, certainly, but one that takes precautions on the side of private vengeance and the pernicious influences of spilled blood. The ikhs, or the "close ones," here become ministers of a repression that is indeed that
[613] of the state. And not only must they thus kill one of theirs, whom their "duty" would have been to protect or avenge, but it is the state that finally absolves them of the responsibility for this murder.

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The Public Law of the "Taqbilt"

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The old acts of penal tariffication most often begin with the formula: ittafaqû jamâ^{c}a..., "in agreement is the jemâa." The latter term has become the leit motiv of our North African political sociology. Let us remember its initial ambiguity, due to the etymology. The jemâa can only be a "meeting," as the ^{c}orf can only be a "presumption." A vein of the fiqh is mixed here with the old communal notions. In many acts and in the conception of a purist writer the word evokes only publicity. This publicity, highly important for example in the matter of marriage, is confounded, it is true, with the auctoritas of the group. The camouflage, at least linguistic, of the montagnard institution has made out of a reality so essential something a bit ephemeral, and which can give rise to reassuring and evasive assimilations. Formidable reality when it is fully deployed, in an insurrectionary convention, for example, as the history of Morocco is full of them (1).

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1. Also in Algeria. Cf. the organization of the chert'iya in L. Rinn, Histoire de l'insurrection de 1871 en Algérie /History of the insurrection of 1871 in Algeria/, 1891, pp. 91 sq.

Mawkish reality when prudence or false shame or /375/ grammatical reserve induce it to express itself only through words with double meaning. The initial formula of the inçâf-s can be interpreted in two senses: communal deliberation or accidental agreement.

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After this preamble comes the name of the chief, the "preposed" one, moqaddem. Again an Arabic word, with an aspect of central power; it is the one that in the present makhzanian system designates the village chief. But here it is quite another thing. This personage is sometimes surrounded by a little senate whose members bear the unexplained name of ait Arbâin, "the

634 /376 cont./
554 a void, or out of a sort of revenge against the event — so consid-
634 erable is the role of the fiction in these societies. The fact is
• 671 that this genre of writings is manifested up to our arrival. Who knows whether the multiplicity of clauses was not sought after as a guarantee against an invading arbitrariness? Certainly, the guarantee is /377/ more or less efficacious. Not only can tyrannical power henceforth infringe upon these deliberations, but there is something even more serious. The new magistery is based on a new political morality. The automatism that the commune looked for in the application of punishment gives way to a discretionary valuation, which it would be false to say is constantly iniquitous. It would not be maintained in such a milieu without the support of legitimacy. But another legitimacy. Codification henceforth collides against the nuances and contingency of a praetorian jurisdiction, which undoubtedly does not fail to invoke religion, reason, and good sense against its rival. The transition is accompanied, among many justiciables, by a feeling of liberation with respect to old constraints of the group, of immediate and pitiless effect. A new faculty of instance, of remise for cause, of individual proceedings and recourse opens where hitherto only the strict communal mechanism tried to govern. Such authentic instincts of the milieu doubtlessly obtain satisfaction. In one sense the amghar carries with him a faculty of deliverance: it is the very one of anarchical destruction, but also, in a sense, that of enlightenment and individualism. One is poorly equipped to describe with precision the play of factors whose alternating victories have undoubtedly filled several centuries, and not only the nineteenth. It will suffice here to have extricated the character of it.

175 In 1132 Heg.: 1720 a fqih originally from the Arghen, the
634 tribe of Ibn Toumert, rises to interesting distinctions, which show
554 to what work of the intellect, and critical intellect, the institu-
[212] tion could give rise. "Among these rural people," he says, "the
[794] jemâ^{c}a and the moqaddem play the role of sultan in regulatory
affairs (aḥ'kâm). The moqaddem is the imâm. If they agree to
[681] compose (sâmah'a) or levy a fine (inçâf), they divide the fine,
and the portion of the one and the other is evident. If they

/380 cont./

The Wording of the Rule

000 Made from harsh internal competitions, from inexpiable vendettas, the group nonetheless presents to the exterior a cohesion which is that of a fagot of thorns, inextricable and untouchable. And is it not significant that this image of a fagot was inspired in the Middle Ages by our first communes?

671 171 This thorny cohesion is sealed by a juridical act. It is these penal codifications called qânûn in Kabylia and inçaf among our Chleuhs /Shluh/, veritable commonplace of the Berbère /Berber/ institution. Revealed by Hanoteau and Letourneux, found, with what profusion! in the Moroccan South, producing in Algeria around 1930 a scandal of surprise of an indeed sympathetic naïveté, their history is already long (1).

1. L. Milliot, "Les institutions kabyles /Kabyle institutions/," R. E. I., 1932, pp. 138 sq., and "Les qânouns kabyles /The Kabyle qânouns/," in the work by Hanoteau and Letourneux, pp. 1 sq., 26 sq., ibid., 1933, remarkable historical critique of the documents provided by these two authors.

One can follow the chain from the edict, already mentioned, of Yah'yâ u Tâfûft (1510) up to the deliberation submitted to the prefect, in the cadre of our municipal law, by a Kabyle village in 1945.

671 212 It is probable that they represent one of the first uses of Arabic writing in the Sous. The synonymy of chl. /Shluh/ ikchchuden, ar. /Arabic/ alwâh', "tablets," "tables of the Law" (2),

2. The jurists of the Sous often speak of these "tables," alwâh', which corresponds to chl. /Shluh/ ikchchuden, "bits of wood,"

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/footnote 2 continued/ to which the customary codifications are consigned. The latter come to be designated under the name of "tables," without further allusion to the material of the instrument. Nevertheless this institution must be compared [764] [789] with the practice of the tabulae defixionis, in rites of spells in which the planchette, often covered with characters and wrapped in a shroud, is slipped into an old tomb.

The society that we are describing here knows only paper for what concerns the juridical acts.

[824] The geographical area of the acts on wood (probably pistachio wood, igg) seems to have for its center the tribe of the Ilalen. In the Ilalen of the East approximately half of the acts are drawn up on wood, the other half being drawn up on paper. In the tribe of the Ilajen of the West the proportion of the acts on wood /this footnote is continued on the following page in the original source/ seems to be a little smaller. In the limitrophe tribes one finds a variable proportion of acts on wood, but still very strong in the region of Timgilcht (Tafrawt) and Idaw Kensus (Igherm). In the Ammeln, for example, few acts on wood. They are no longer found, to my knowledge, at Anzi, Ifran, Bu Izakarn, or in the Haut Atlas, where paper has been generalized since the sixteenth century. The proportion of acts on wood seems hardly to have varied since an ancient period and to have remained fairly constant up to the establishment of the Tribunaux coutumiers.

is /381/ attested by all the old jurists of the South, who devote

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671 212 many dissertations to it (1).

1. For example, as-Suktânî, Ajwiba, ms. Ud ᶜAbd al-Mawlâ, pp. 139 b and 140 b (Deren).

It was undoubtedly under this aspect that the problem of the native law, outside the fiqh, was posed for them. One can thus suppose at the beginning of the sixteenth century, at the probable epoch of the generalization of the notariate in our mountains, a parallel generalization of these codifications. The very name of these elaborations — even if they replaced something older and of which we shall never have any idea, save for the chance of a lucky find — is strictly Arabic. It is the very word, designating this "equity," that our jurists sometimes oppose to the norms properly speaking among the sources of the judgment. Inçaf is a religious word, with moral sonority. If a semantic extension makes it mean "fine," then "penal tariffication," the fiction of an arbitration of the viri prudentes authorizes the transition from one notion to the other. A continuity without rupture is thus established from the orthodox thought and from its paradoxical particulars to the illicitness of purely laic legislations and certain of which, horrors! deal with personal status.

671 212 779

This is what the writers indeed felt, this is what they have always held. Even if one makes allowances for the professional scruples of the scribes, pious men with devout affectation, with sanctimonious words, this characteristic is found even in the content of these charters. Effort at attachment to orthodoxy! A text of 1142 Heg.: 1730 assimilates the compensatory tariff for robbery, practiced in Seksawa, with the canonical penalty of amputation of the hand: in fact, says our doctor, 33 onces were the value of a hand during the period of the Companions! Every time that it can be done, erudite qutoations come to legitimate the foreign communal law. A similar act of 1147 Heg.: 1735, emanating from the "cadi" sidi Moh'ammed, son of the saint of Assttif, strangely joins a quotation from Khalîl to some

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175 683 671 779 /381 cont./ considerations upon the tariff for facial wounds, evaluated at 1/20 of the dîâ, that is, 72 Abbassian mithqâls-s. An opinion by a fqih from Arghen already mentioned (act of Tinwalin of 175 681 671 779 1198 Heg.: 1784) is based conjointly on the Tuh'fa and on "what rules in the matter of ᶜorf and of ᶜâda in the country of Sous, from Fès /Fez/ to the Sous, in the matter /382/ of fines and of inçâf: and this is licit for these countrymen."

671 This pedantic contamination between the statute and the native law is not alone in revealing the true nature of these codifications. From what one is going to see now, even though it is only a matter of indications or traces, will doubtless stand out traits probably more authentic. The preamble of all these texts has already been noted. It is an agreement recording the unanimity of a group on its maçâlih', on its property. One knows indeed what use Malekite /Maliki/ empiricism can make 671 779 of this latter notion. But enough allowance has been made for the religious impregnations of the system for one also to seek to disclose there another inspiration, that of a collective pragmatism, making sure of its legitimacy by the pursuit of its material 671 634 675 and moral interests. This legitimacy manifests itself by social contract. This is not an accident. The contractual aspect is in fact quite striking in these testimonies. This is a mutual commitment among them on the one hand, with the promoted moqaddem on the other, to which the ikhs chiefs subscribe. It obligates them as it obligates the moqaddem, and if the latter, curiously enough, does not figure in the act it is because the consensus of the patres is deemed to entail his conditioned adherence on the basic points stipulated by the document. A contract thus becomes the law of the group.

The clauses most often constitute a veritable tariffed charter. It is rare to read, as in this document of 961 Heg.: 1583 (Idaw Geryun), that the moqaddem and his assistants "will take" what they please. Such a tone is isolated. In the totality of the cases [126] it is a matter of a minute tariffication. A large number of these documents has been collected by us in the high valley.

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The Community As Organ of Juridical Creation

"Public law," we would say. To what extent is such an appellation legitimate? In fact, despite the development of the contract in this society, the statutory aspect of many individual relations on the one hand, their implication with collective factors on the other, finally the omnipresence of a communitarian life whose adjuvant force and the feeling of well-being and normalcy that it inspires have for ransom a very extended gamut of sanctions, continually entail the interference of the private and of the public, of the civil and of the penal.

Such an interference will go by itself into an "archaic" law, and the fact that one sets up here a question that elsewhere would be pure scruple, and in addition anachronistic, indicates to what extent the present investigation has believed it necessary to turn aside, apropos the /383/ Seksawa system, and Chleuh /Shluh/ system in general, from such commonly accepted ideas, those of the late Marcy, for example. The distinction of public law and private law is related moreover, especially perhaps in Seksawa, to aspects of expression and elaboration rather than to the nature of things. But aspects how strongly contrasted! Up to the contemporaneous period the jemâa has remained the penal judge. On the other hand, we see from the oldest period that an external magistery is called upon in order to recognize goods and persons. But, in addition, and on this very matter, the legislator is none other than the group.

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This account has sufficiently marked all the traits of indivision, confusion, or junction between this communal law, as it is expressed or is conceived itself, and the fiqh. As in several departments of private law, it is in a sort of contractual excess that a surpassing of the model, thus a useful alibi, seems to have been sought. This law has outbid a law of citizens and merchants by the meticulous extreme of the cheap-Jack. With its being so close to magico-religious bases, to the communitarian vehemence of the group, it is not by an oath that, like our good towns of the

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671 [779] thirteenth century, it creates the communal convention. It is by a contract.

One thing nevertheless remained inassimilable even though it tried to absorb it into the accommodating Malékite /Maliki// opportunism of the maçlah'a. This is the faculty of legislating (1).

1. De Ligniville, "La coutume privée des ait ᶜAt't'a du Sahara /The private custom of the ait ᶜAt't'a of the Sahara/," in CHEAM, 1937, gives interesting details on some important legislative modifications decided by means of ekklēsia: right to inherit granted to the woman, the suppression of the character, executory with respect to marriage, that was given to the application of henna to the conjoints, the husband's designation of ten men prohibited to the repudiated wife, alleviation of the levirate, the introduction of the waly, etc.

[421] [586] 671 794 Laic faculty in its foundation, democratic in its exercise, unlimited in its applications. Two examples of it have already been cited: a procedural deliberation over property, and another over the status of the wife and her right to autorepudiation. Two other deliberations, quite recent, have governed the distribution of the offerings of Lalla Aziza and of Sidi Mh'and of Ammern. In both cases the jemâa of the Seksawa had to be aware of the finances of its saints. And although these deliberations have been provoked in our day by a foreign initiative, on grounds a little experimental, they nonetheless include a lesson. It was only to observe the naturalness, the gravity with which the assembly took hold of matters so exorbitant of everyday life — at least to our eyes — in order to understand that to its people its competence extended not only /384/ to the temporal administration, not only to the status of persons and goods, to the whole matter of the

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private and public law, but further to the administration of the sacred.

Let us remember the constant intervention of the group that is revealed at all levels in the religious, economic, juridical institutions of these societies. Let one judge what its initiative could have been in the periods of expansion.

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Group Reaction
Individual Ethics

Attempt at Reconstitution

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Thus, in this life, two elements confront each other. The one, patrimonial; the other, movable and acquisitive. One establishes an equilibrium on the structure of the group, itself linked to an agrarian order; the other provokes incessant competition fed by full monetary play and the expansion of contracts.

On the one hand, law of the soil and of origins; on the other, law of money and convention, in other words, also a law of individual work and adventure. Between the one and the other, a tension, which further results from certain aspects of the judiciary joust, but formerly must have been expressed more fully. For four centuries a least a contentious genre ruled, where the law is expressed by action and has writing at its disposal. But the group, let us take heed, maintains this justice outside its walls. It may conspire, indeed in spite of itself, with the montagnard order. It is too far removed from it in its spirit as well as in its methods. In the end, it will destroy it.

There was undoubtedly a time when states, or, better, juridical attitudes, counted more, linked to the structure of the city and guaranteed by immediate safeguards, some traces of which still remain. It is not that their relations excluded movement or the unforeseen, or froze the person in an immovable communitarian equilibrium. On the contrary, one might imagine that the economic modes did not often depend upon what we call equity. Temporary success by violence, seizure of pledges very broadly

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776 177 Mediterranean foundation. Thus perhaps here this Amer u H'addô, magician-king according to the Arab chronicle, eponym of the highest valley. The agellid-s of the fourteenth century were perhaps the first great adapters. But they are buried in an indiscernable past.

The Age of the System

671 779 182 It is thus better to hold fast to a patent fact: that the Seksawa system realizes a transactional equilibrium with Islam, and undoubtedly in large part conscious.

Great sections of fiqh exist intact here and can easily be recognized: use of Arabic writing and orthodox notarial forms. Clear conviction of the user that he is drawing inspiration from the one and the other norm, the indigenous and the oriental, the former gaining through local conditionings, the latter in the /387/ ethical choice. So many traits that would make one think of a profound adulteration of the system. And although composite is not the synonym of backward, the impression would be that one is dealing, in the Chleuh /Shluh/ law, with a bastard and derived phenomenon. But here is the opposite side.

[212] Invasion by the fiqh, certainly. But delimited, elaborated in a personal ensemble. Adoption of writing, certainly, but with the benefit of local prestiges. Assimilation, certainly, but balanced, circumscribed, desired, and sometimes even, one would say, simulated. Would this law then be a very old system able to safeguard, under wise adaptations, its original legacy? Similarly, what is to be concluded concerning its morcellation? It presents itself today divided into minuscule personalities of cantons and ravines according to a compartmentalization that, remarkably enough, does not always coincide with that of the ways of speaking. But does that imply youth or decadence? At the very least the existence of a Chleuh /Shluh/ juridical koïnè, entirely coherent and thoughtful, although broken up into a thousand varieties, postulates a maturity favorable to the

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/387 cont./ formation of large ensembles and broad styles, rather than the spontaneity of youth.

Among its traits, there are some archaic ones. And not only on the plane where one ordinarily looks for -- and finds -- the one of magic or of folklore, but on the plane of the law itself, a matter indeed more irrecusable. First of all, the notion of an agrarian order with ritual sanctions, with magico-religious defenses, survives in some techniques of immediate settlement, some attitudes generative of powers, of movements, or of juridical states. It is probably thus for what touches on the oldest economic foundations: relations for irrigation or pasturing, landowner equilibrium of the ikhs-s, exchanges with the communal sacred. More on the surface, an agonistic reality is expressed in the judicial joust (1)

> 1. J. Berque, "Documents anciens sur la coutume immobilière des Seksawa /Ancient documents on the landed-property customs of the Seksawa/," R. afr., 1948, pp. 399 sq.

and in the very details of the procedural play. But only its expression is individual. It stems in fact from the same archaism upon which are founded the pacts of mystic patronage, seasonal feasts, and the ritual disputes for which they furnish the occasion: thus the auction for the sacrificial meats, still very recognizable under a cloak of notarial law.

But it is this elaboration that leads. A vigorous synthesis takes place at the communal echelon. It suppresses all the rest into incoherence and discontinuity. Collective tension has become /388/ dialectic of litigants. Relations with the sacred take the contractual path. The agrarian order is maintained only by resorting to contentious debate. Islamic schemas dominate the successoral material so much that the indigenous law no longer deviates from the fiqh, apparently at least, except in the quantity of subterfuges, af. /Arabic/ h'iyal. All this law, which guarantees, through the duration, the permanence of the milieu, has

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671 779 182 passed over in a block to the principles of importation, to the point that it is necessary to look very attentively and very far in order to find what it dissembles. More intact, marriage combines, to the exclusion of any liturgical aspect, old practices marking the communitarian intensity and a very acute contractual character. In this genre the institution, which comes to a sort of co-operative ratiocination, outbids Islam. Under this strong notion of individual acquests, under the adjacent ideas on which depend the parsimony of the emigrant serving for the resiliation of sales, or the peasant parsimony serving for their consolidation, or the bitter dispute between the familial inheritance and the avarice of each one, are glimpsed a play of investments and almost of agio, a permanent inflation brought by the abundance of importations of cash and the scarcity of land: so many traits that one cannot consider as recent.

671 675 421 182 Quite on the inverse, here is its very modern cachet. The mobility of civil rights attains an almost citylike rhythm here. The personal value of the obligation, the element of intuitus personae inherent in the contract disappear before a great latitude of negotiation and interchangeability. Thus in the twuliya, "transfer of the rights of the taker, "in the istidkâl, "transfer of successoral rights," and in the unconditional capacity to constitute "mandatory," lukil. The formularies are applied to render by redundances the substitution thus realized. One reads, for example, in a twuliya of the a. Umgan, 906 Heg.: 1654, the following expression: tawlîya ǧah'îh'a wa'starkaba-hu ff sarîjati-hi wa nazzala-hu ff mah'alli-hi, "valid transfer: he had it get up on his saddle (cf. chl. /Shluh/ tarikt, name given to the substitution), and put it (lit. "got down," cf. chl. /Shluh/ verb zuggez, in the same sense) in its proper place." Transmissibility of contractual obligations, infinite play of credit, freedom in representation: all that constitutes a sort of rejoinder to the unwritten laws of the equilibrium between ikhs-s and of patrimonial permanence. This agility of the mobilizations and substitutions extends even to the most unexpected objects, and which one would believe most bound to the identity, truly mystic,

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671 of the person: shares of benefice of a saint, tisura (trans. of the
675 Arabic futûh'ât), of the right to mutual assistance, tiwizi, of
421 "protection," etc. There one /389/ is at the very antipode of
182 what one imagines of an "ancient" law.

What is to be said about this division of labor that not only
671 qualifies, in the landed-property procedure, judges outside the
182 group, but jealously denies competence to the temporal chief?
[692] These careful delimitations, although undoubtedly from the most authentic foundation of the Chleuh /Shluh/ society, appear irreducible to archaism. Nevertheless the splitting of the judiciary instance obeys exigencies of recourse to the outside, of pause in the course of the joust, and, in short, of rejection of responsibility by the group, which express obscure traditional sentiments. This gives rise nonetheless to a procedure of scholarly type, written and aspiring to cityness. Traits undeniably "advanced": condemnation by default that the codifications anticipate, fine for nonexecution of the sentence or for failure to answer a summons, this last motif recurring constantly.

681 The penal law, up to a very recent period, has been admin-
182 istered by the jemâa. The latter has never really given it up. It
[634] is even for this purpose that it deploys the most initiatives and most willingly exercises its legislative function. But let us note that this penal law, based on pecuniary composition, a composition duly tariffed, evinces a singular institutional maturity. While the gentilitial structure inspires the agrarian order, it is effaced, in the penal one, before something that is clearly of the public law, and felt as such.

695 The plural oath has retained its role. It concludes all litiga-
182 tions that the writing does not determine. But this restriction is
[691] already quite important. And moreover, even where it keeps all its value, the oath has been driven into a reduced position: no longer of sworn law -- but of a second element of a procedure begun on an intellectual and profane plane. The richness of the elements of magico-religious order that one finds here and there in this part of the system cannot efface the contrary aspects, which are also striking. Certainly it is possible to suppose that

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796 795 assume a "national" role, and benefit from an organized cult, with great gatherings and financial arrangements. Still higher reign the ties subscribed to by such-and-such a village or, less frequently, such-and-such a taqbilt or such-and-such a family, with regard to saints from the outside. Individual depassments then enter into play. But confreric affiliation is scarcely represented in Seksawa, or rather is confounded there, under certain of these aspects, with the particular devotions to such-and-such a "marabout": here and there in the mountains one finds the faithful of sidi Ah'med u Musa, who attend his end-of-summer musem. Purely individual matter, matter of "conscience" and also of mode, hence the growth and decadence of a brotherhood like the Nâçiriyya for example, quite decayed from what it was a century ago. Matter of craze also, indeed of vertigo, as was seen at the time of the push of Mâ' l-ʿAynîn in 1912. And there one touches upon the richness, the unforeseeability of a spirituality whose movements of course largely surpass the cadre of the Seksawa or even of the Atlas.

771 /391/ The liaison to the ground and the hagiological creation are formed diversely according to these stages, at each of which their power is affirmed, one might say, in inverse proportion to each other. At the base, a collective allegiance sustained by an agrarian order. At the intermediary stage, rudiments of cantonal, indeed federal, cult. Then contracts between groups and patron saints. Finally purely personal devotion. So many social modes, orders of ideas and sentiments that are echeloned on these different levels, but not, it is true, without interferences [779] of one with the other. And Islam reacts, constantly although unequally, on everything.

• 671 178 179 In the law, on the contrary, there has not only been transformation, but reconstruction. Borrowed norms have operated on a layer less deep than the old institutions that they tended to supplant. This discordance has brought adjustment. Consequently, a strong denivellation today separates the spirit of this law from its procedure, and even from the mores through which it attempts to safeguard, in spite of this procedure, what is essential for it. Thus

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671 the system was dedicated to complication, subtlety, feint. The
178 contribution from the outside became the avowed principle,
177 whereas the indigenous foundation fell back on secrecy and
chicanery. Nevertheless, the ensemble held. It held by the
671 conspiracy of the economy, of a collective psychology, and of
182 the event. It held above all because this society set the communal institution against the external threats and internal dislocation. The commune rebuilt everything that collapsed. This permanent reconstruction alone rendered possible the maintaining of the ensemble in spite of so many incongruities.

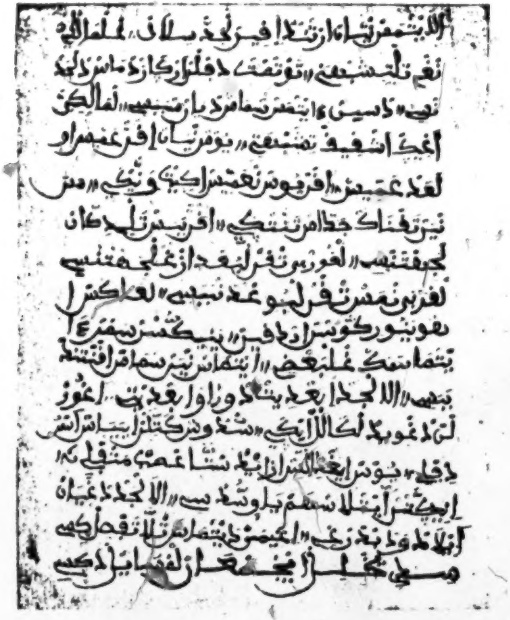
182 Only the commune fashioned the synthesis. And it is precisely in its most conscious form, most modern to our eyes, the most striking by its democratic and laic character, in these deliberations by the group on its law and its saints, that so many heterogeneous elements were best expressed: the old shy particularity, reference to Islam, and, above all, the desire to adapt, to innovate in order to preserve, to innovate in order to survive.

A Suppressed Culture

121 This course is the very one of history. In fact, we found history, among the Seksawa, not only in the obscure testimony of medieval chronicles, but in the structure of the groups, the adventure of individuals, and the /392/ very hierarchy of the sacred. Perhaps it is also to be recognized in the style of their culture and of their life.

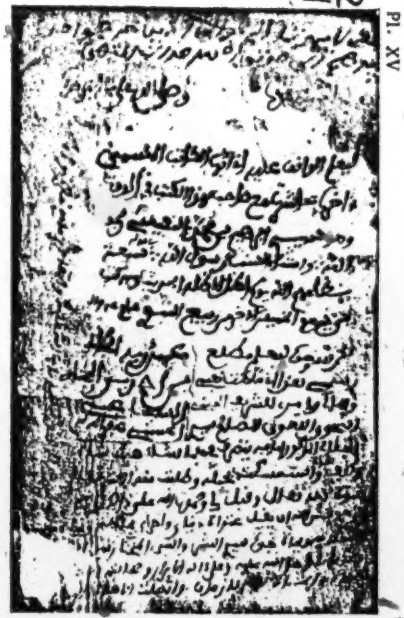
177 The evolution and the secular action of the capitals, Marrakech /Marrakesh/, Taroudant, which are in some respects two cities of God, came less to modify the local genius, or to precipitate its rhythm, than to add to its complexity. As far as one goes
181 back, it is found imbued with this aptitude for heterogeneity,
177 which, if it is not original, certainly goes back to a stage still anterior to our oldest archives. Although this stage remains to be specified, one divines there a singular propensity to accept the thing of others. Introduction of foreign norms, acceptance of master words, in this case the language of a legal fraternity somewhat sorcerer, culture of defensive strategems, use of mask elements and refuge elements: all that creates a composite, artificial genre, both welcoming and resistant, servile and inexpugnable. For the Chleuh /Shluh/, his very nature.

1: Berque--662 Z-5 (ca.1950) 1955 MW11 Rajuh MW11



Juridical text of the Awzal genre

The first line reads: wala aytma-sn-yan ur ten-d iqqin ljad silad gh-lmalikiyya, "no longer that the brothers of someone are excluded (from his succession) by (the existence of) the ancestor except in Malékism."



Act of devotion from a disciple to his sheik, dating from 1194 Heg. 1780, made at the zāwīya of Takerkuzt, and collected on the margin of a book of the zāwīya of the Mez'ud'a.

/49 cont./

776 [778] [619] Seksawa, Sidi ou Sidi of Taroudant, Sidi Sa^{c}id Ou ^{c}Abd en Na^{c}im of the Haha, and especially Sidi Ahmed Ou Mousa of the Tazerwalt, see numerous tribes of the same race assemble each *[631] summer around their roofs of green tiles. These saints thus belong to very large social groups made up of one or several con- [782] federations. It is they whom one invokes from a great distance to implore their protection or swear certain vengeance on an [778] enemy. Kaids and chiefs driven from their homes, assassins in flight, come to seek refuge near their tombs, and the poets who address themselves to a large audience do not fail to call off their names before improvising their songs.

792 [619] [778] The marabouts of the tribes are less famous, but their role remains considerable. They have often left near their tombs numerous descendants, heirs of their "baraka" /Berber term indicating the quality of holiness/, who are invoked as arbitrators 695 in internal struggles. Their qoubbas /kubbas/ are the rendezvous •671 of the coswearers whom Berbère /Berber/ law requires to assemble in cases of murder or theft.

776 789 [778] Finally come the saints of the cantons and villages, whose /50/ names are sometimes obscure and enigmatic. The latter sometimes reveal their presence only by the existence of magic trees, sacred springs, or simple piles of stones. But their usefulness is no less. They protect the harvests, frighten thieves, and people put under their protection the cut wood, the plows, or, on the coast, the oars of the boats and the nets; they make the walnuts and olives ripen, provided that people come occasionally to celebrate near them a common meal accompanied by dances and songs. Little girls come to sleep on their tombs, in order to learn how to spin without effort; married couples, mounted on a mule, turn around them seven times in order to escape bad influences. [173] It is through these unchronicled minor saints that the bond of Berbère /Berber/ Islam with the ancient beliefs, preserved more faithfully by the memory of the women than by that of the talebs, becomes manifest.

771 178 As a matter of fact the new religion has not succeeded in making the old naturistic cults of former times disappear

/131 cont./

*631 /makhzan/ or the great chiefs, would merit being compared with
619 the one that we discovered first of all in the footsteps of our first guides loyal to the kaids.

*631 Here, in fact, the villages that are tiered on the sunny
*634 slopes of the torrents, near immense walnut trees irrigated by
619 the gushing waters of the Atlas, do not know houses of sheiks or
[361] caliphates. In these valleys one would try in vain to distinguish
[342] the dwelling of the poor man from that of the rich. Each of these little mountain cantons forms a separate state that a council administers. Gathered on a terrace, all clothed in brown wool, the notables gravely debate among themselves, for /132/ long hours, the interests of their villages; no one raises his voice, and, seeing them, one would not be able to discover their president, a timid old man who has been given for one year the mission of carrying out their decisions and who is greeted by the title of "moqaddem" /mokaddam/. Their judgments are inspired by a custom
• [671] that they hold from their ancestors without modifying it; they punish crimes, stop disputes, impose the most severe penalties on thieves. Their concern is gladly directed toward the protection of the crops and pastures. In every circumstance they watch jealously to see that the interests of the patriarchal families, whose heads they are, are precisely respected. Then, their deliberation ended, after a prayer recited together, they separate and go to supervise a corvée from a distance.

462 The humble tableaux of the life in these villages in the high
184 mountains show us that the existence of the independent Berbères
512 /Berbers/ of the summits does not differ from that of their
[171] brothers of the Rif or of the Kabylie /Kabylia/. Here all the women are assembled in order to do the transporting of the manure together. Adorned with their festive apparel, rich and poor,
[482] young and old place on their heads large doum baskets filled with the village manure and descend, singing, in order to take the fertilizer to all the little fields that border the torrent. Another
[653] day all the men assemble, under the direction of the notables, in
221 order to repair the ségulas or the souk /sook/ roads. Then, at the
233 end of spring, in all these small anarchical and happy republics,

/134 cont./

175 *631 *634 /footnote 1 continued/ his strength, whereas the moqaddem (pl. moqaddemin) is elected or designated in turn from among the notables.

Higher still, this chief was no more than a magistrate elected for a year, the "moqaddem," who served as arbitrator in disputes. In [178] the most remote valleys these small republics had kept intact all [671] the institutions that we were still able to find near the summits, [652] an oral or written customary law, a treasury enlarged by the fines [712] imposed on the guilty, and old fortresses known by the name of [343] "agadir," which served both as a collective storehouse during the peace and as a refuge in the internal wars.

Such was the political state of the western Haut-Atlas /High Atlas/ until 1860, at the beginning of Sultan Sidi Mohammed's reign, which the oldest old men still remember. Since that time the stages of the transformation of the country are in all the memories. The conquests of the kaids of the Mtougga began after the fall of their enemy El Hajj ʿAbdallah Ou Bihi in 1868. They were seen to advance by the trail of the Tizi Maʿcho and try for a time to take over the richest tribes of the upper valley of the Sous. Then the amghars of Tagontaft, freed by a revolt from the authority exercised over them by the kaids of Agergour, conquered the upper valley of the Nefis before being recognized in turn in their capacity as kaids of the Makhzen in 1876.

175 *631 The reign of the sultan Moulay el Hasan was like a period of contemplation during which the new chiefs prepared their intrigues. Upon his death, by means of the anarchy, the Demsira, the Dwiran, Aghbar, the Aït Semmeg, Onein were defeated by the masters of Bouaboud or Tagontaft, taken away from their sheiks of former times, and handed over to exacting masters who ceaselessly demanded /135/ money and warriors in order to undertake new wars. The tribes already subject to the kaids of the Dir, Ouzgita, Gedmiwa, Mzouda, were in turn annexed to the great commands, and greedy caliphates foreign to the country were substituted for the traditional sheiks, easier to satisfy because they were closer to their subjects.

/219 cont./

623 and intervenes to regulate the use and repair of the séguias; fi-
[185] nally, it often designates minor functionaries remunerated by the
[241] /220/ community for the systematic regulation of irrigation:
[245] these are the ones that are called by the name of "amazzal," or
[624] again the "little inflas," or the "inflas of the water."

623 Sometimes it is the council of the "taqbilt" itself that inter-
627 venes in order to apply to those who act contrary to the crop
681 police the fines called "azzain n igran," fines of the fields. But
[625] most often each "jemaᶜt" of a "moudaᶜ" fixes these penalties as
it likes and collects the fines for its profit without swerving from
a traditional tariff known to all. Moreover, it is in this form of
• [671] the "azzain n igran" that the customary law at the heart of the
[177] "moudaᶜ" persists longest, even when the progress of the penetra-
[632] tion of the Makhzen /makhzan/ has led to its disappearance in
the country.

623 Thus, for reasons that are related to the conditions of mate-
184 rial life, the assembly of the "moudaᶜ" often assumes great local
importance. Even in regions like that of the Haha, where the
population is dispersed over the whole territory in isolated houses,
the use of forest pastures, the execution of tasks in common by
mutual assistance contribute toward maintaining the tradition of
623 the "jemaᶜt" councils. Meetings are held when necessary in the
[346] Friday mosque, which is sequestered, like all the houses in this
[361] country, on a solitary hill (1).

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1. It may happen that the organization of the "moudaᶜ" develops on the model of that of the "taqbilt" and that it is then directed by a moqaddem. This is the case in several small tribes of the Seksawa (the Ait Haddiyous in particular). This event occurs in a region where the "taqbilt," divided into three thirds, are stronger than elsewhere; one grasps here from life one of the phases of the appearance of new autonomous fractions being formed by simple growth of the "moudaᶜ." One also sees from

/227 cont./ One still sees
*634 652 178 [451] at present, figuring in the annual accounts that the moqaddem has to render to his successor, the purchase of a she-mule offered as "hedia" /hadiyah, "gift"/ to the powerful kaid of Bouaboud (2).

2. From F. de La Chapelle (ibid.).

*634 681 574 [184] Often another custom, particularly widespread in the Sous and Anti-Atlas, is introduced, which permits avoiding the difficulties of the distribution of the fines: that of the "imensi n tqbilt," the dinner offered by the guilty one to the inflas of the fraction. The menu of /228/ this meal is fixed in advance according to the importance of the crime or offense; it is always accompanied by an offering of lumps of sugar.

The rapacity of the "inflas" -- well known and even proverbial, since it is said in the Sous plain that they would be capable of claiming up to the dogs' share of an inheritance -- is given free play at the "imensi n tqbilt." In this circumstance the [578] beneficiaries of these common meals are sometimes seen to quarrel because one of them invites, without the authorization of the assembly, a passing guest. In fact, it seems impossible to acknowledge to them that this outsider thus diminishes everyone's part and takes away from the family heads the just payment to which they are entitled (1).

• [671]

1. Certain customary regulations gravely discuss this problem of distribution, and people consent to close their eyes to the wrong done to the inflas by the invitation of a guest on condition that the latter take only one single mouthful from the dish, through simple politeness (Droit coutumier de l'Agadir de Tamaloukt /Customary law of the Agadir of Tamaloukt/, communicated by M. Ben Daoud).

/228 cont./

*634 184 [178] /footnote 2 continued/ that the moqaddem is the base on which all the affairs of the tribe rest."

[613] /229/ Concord is difficult to establish in the bosom of the councils of inflas not provided with a moqaddem, where the only rule appears to be to maintain complete equality among all the *634 619 184 representatives of the "ikhs." In order to prevent discords and to come to impose on the strongest groups the decisions made by the other families in conformity with custom, it often happens that the small elementary states of the mountains come out of their isolation and join their neighbors: thus true tribal councils are constituted, in which each "khoms" delegates its inflas. In the [692] Anti-Atlas such are the assemblies of the Aït Mzal, of the Ida Ou Gnidif, of the Aït Wadrim of the mountains; they each bring together 24 representatives who judge crimes in conformity with the ᶜorf (1).

*634 619 692 184 682 •671 [613]

1. In these tribal councils the conditions under which the customary law is applied in case of murder let the laxity of the social institutions be perceived. Among the Ida Ou Gnidif, for example, the inflas friends of the murderer give back to his family the part of the fine that comes to them out of the sum imposed by the tribe. Each one supports his brothers; the "ikhs" are stronger than the tribe. Often, it is true, the customary law foresees this situation, and the ᶜorf intervenes to condemn to increased fines the inflas who try to vouch for their brothers or appeal for them to outside authorities.

Thus each of the council members is ceaselessly impelled in two opposite directions: the duty to protect his brothers or the brothers of his friends, and the desire to take part in the distribution of the goods of the guilty. His conduct is inspired by the circumstances.

/255 cont./

/footnote 2 continued/ curious light on the psychology of the council of the chiefs of the agadir. We thank him for kindly authorizing us to cite some of the most suggestive ideas of this translation.

So we see the canton storehouse take on, without losing any of its defensive character, a growing economic importance; the number of rooms multiplies; a market is established at the door; special functionaries: a doorkeeper, some amins, a council of notables who proudly give themselves the title of "ʿOmmal" -- "governors" of the agadir -- see to the good functioning, the maintenance, and the security of the storehouse. This organization becomes the /256/ point of departure of a complicated juridical regulation that fixes minutely the rights and the duties of the users; finally customaries appear, which are among the most surprising and perfect monuments of the legislation of the Berbères /Berbers/. These collections, to which the name of "louh," small board, is given, doubtless because they were originally written on a small board suspended on the wall, sometimes have more than 200 or 300 articles. The repair of the rooms and their roofing, the use of the measuring instruments, the sale of the commodites, security /Fr. nantissement, security, pledge, lien/, the use of loans on harvests are foreseen and studied in these codes with a precision of detail and good sense that does not seem to us to have been surpassed in any collective organization of the autochthons of North Africa (1).

1. Cf. our study: "Un magasin collectif de l'Anti-Atlas /A Collective Storehouse of the Anti-Atlas/," Hespéris, 1929.

The council of the agadir of the Anti-Atlas is constituted, like that of the "taqbilt" of the Masmouda, by the heads of the most important families of the "khoms" or of the tribe. Its authority increases ceaselessly in proportion as the storehouse

/257 cont./

343 571 554 683 Moreover, it is important to defend the sentences of the "ᶜommal" against all foreign interference. The justice of the chraᶜ /sharᶜ, sharia: canonical law of Islam/ has nothing to do with their affairs, and one who says that the "louh" is only childish stuff and cannot serve for judging people lies and accuses the notables of errors; and that is as serious as accusing God himself of lying, because the notables are as sacred as the "louh," and every question not foreseen in the "louh" is consigned to their minds. The "louh" and the notables are as one. He who does not admit it will have to pay 50 dinars!

343 571 554 [574] [691] Under these conditions one understands that the leaders of the fortress naturally come to regard the "louh" and the fortress itself as their own property. It is necessary to offer them a meal in order to have the right to take cognizance of the collection of customary law, of which they are the sole holders. They claim that their competence extends to all circumstances of the common life, and there is scarcely anything but the repression of murder, doubtless reserved for the common ᶜorf of the fractions, that escapes them. They keep the better part of all the fines that they collect, and the agadir treasury receives a part only if it is a matter of a quarrel or theft.

[434] [681] [652] [556] [471] The "ᶜommal," by the spirit of their deliberations, thus constitute a small privileged senate, made up of rich men who exploit as they like the capital deposited in the agadir by the tribe. On the other hand, they guarantee the safety of the deposits and facilitate all /258/ the complicated transactions that a skillful legislation, whose secret they have, permits realizing.

[186] Such juridical monuments give the Berbères /Berbers/ pride in these spontaneous creations of the genius of their race. Just as people cite the best-constructed agadirs and take their arrangement as a model when it becomes necessary to build, by general corvée, a new fortress, so do they copy, while adapting them, the best-known "louh." Those of Tammellokt to the south of Tiout, of Tamalout of the Id Nouh in the Sirwa, of Ajarif or of Tasgent of the Ilalen are among the most famous.

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*634 578 613 soon abandons the title of moqaddem in order to take the one of amghar (1).

1. "Amghar," pl. "imgharen." Verbal noun originating from the root Mghr, to be great by stature, age, social position (de Foucauld, Dictionnaire touareg-fr. /Tuareg-French Dictionary/, II, p. 164).

The Arab word "chikh" /sheik/ translates very precisely the Berbère /Berber/ word "amghar." In certain regions of the western Atlas (Mzouda, for example) the notables are designated by the name of "Inmoghorn," derived from the same root.

*634 671 681 We have mentioned the existence of the acts drawn up at the time of the nomination of the moqaddem, which for one year fix the scale for the settlement of some offenses whose repression is left to the free disposition of the president of the assembly. Written in very bad Arabic, these documents are nevertheless interesting to examine, because /272/ they clearly indicate to us the respective position of the president of the council of notables, of the inflas, and of the tribe, at the moment when the amghar makes his appearance.

[592] When tradition is respected and a moqaddem chosen according to the customary rules, we see figuring in the act, which is like the "lender's decree" of the minor Berbère /Berber/ magistrate, the names of all the family heads in the "taqbilt." To the number of 12 or 15, they were witnessing by their presence the general consent given by the canton to the new scale of fines.

[652] The customary rule is to divide the sums paid by the guilty ones into three equal parts by application of this convention: one third goes to the moqaddem, one third to the "taqbilt" in the person of its inflas, one third to the common treasury, which provides for the expenses of hospitality and for collective expenditures.

/272 cont./

*634 681 178 Now it sometimes happens that on the scales of settlement thus established there are substituted for the names of all the notables of the fraction those of three or four important personages, who give their approbation in the name of all. At the same time, the primitive rule of distribution of the fines is perverted. One third is apportioned to the moqaddem, one third to these influential men, who give themselves the title of "ʿayan" (1).

1. Arabic "ʿayân," notables.

[652] one third to the "taqbilt," represented by effaced and starving inflas. With the same stroke the common treasury disappears.

*634 671 178 A decisive step is taken when we see the traditional name of "moqaddem" disappear in the acts to make way for that of a personage henceforth called "the respected amghar So-and-So." Near the name of the amghar are found only those of the notables, the "ʿayan." An additional clause stipulates that the new master [681] of the canton will collect, in addition to a third of the fines, a [651] third of the ʿachour, the Koranic tax that the Berbère /Berber/ [794] republics paid up to then wholly to religious personages or to the [735] poor. Often, even, a measure of barley per household was [465] granted for the benefit of the amghar. Personal power is henceforth established.

*634 661 578 613 726 These beginnings did not exist without requiring long and patient efforts of the new chief. Before taking authority, the amghar has arranged for himself the support of the heads of the most important "ikhs," and by /273/ clever intrigues he has succeeded in setting aside those who were hostile to him or making them disappear. But almost always this internal revolution does not take place without combat. Another notable, equally rich and courageous, opposes the ambitious amghar with all his forces, with his "ikhs"; war breaks out and is waged furiously until the defeated one is killed or banished with all his people; his village falls into ruins and the victorious chief retains power as long as he has the strength to do it and escapes the

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/282 cont./ institution of councils of inflas and of moqaddems has already disappeared, the policy of the amghar is obviously simplified; it suffices for him to protect the minor sheiks who belong to his leff, without intervening within the cantons already used to despotic power. The amghar Mohammed of Tagontaft did this among the Aït Iraten, at the time when he had undertaken to drive the "Aït Atman" from the valley of the Nefis. The amghars of Talemt, chiefs of the leff of the "Aït Zolit," whose role on the south versant of the Atlas we have seen, /283/ also dominated, without doing away with them, the minor sheiks of Taberbourt, of the Aït Oumzal, and of the Onein, who were both their allies and their subjects. The feeling of leff solidarity here outweighed the personal ambition of the amghar, whose first desire is usually to increase his direct command in order to augment his resources. But all moderation disappears when the chief succeeds in conquering a canton of the adverse leff. He then puts at its head an amghar without local authority, to whom he entrusts a single mission: to watch over the collection of ceaselessly heavier taxes and to make the defeated enemies rapidly disappear.

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One would look in vain at this first stage of the amghar's power for an original feature in the organization of his command that could be regarded as the rough outline of a new political organization. This is because the authority of the new chief, which is still exercised in a very reduced domain, does not need intermediaries; in order to become strong, it borrows traditional forms all prepared and adapts with flexibility, as we have seen, to existing traditions.

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We scarcely see sometimes appearing near the amghar some war comrades, who have come from the outside and who form a kind of personal guard. Most often, however, his "ikhs" suffices for him to constitute this force; outsiders are often accepted with difficulty, their presence gives the amghar who surrounds himself with them too much the air of a gang leader, and the tribe would badly suffer their excesses.

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We are not acquainted with any amghar who has a prison. This is because in all circumstances the chief is still inspired,

*634 /283 cont./
697 for repressing crimes and offenses, by the old law of the "taq-
•671 bilt," in which the only penalties envisaged are death, exile, and a fine.

*634 This absence of proper institutions suffices to show how the
616 regime of the amghars represents, at least so long as they re-
182 main mere leff chiefs, a transitory and precarious form of political organization. Too close to their brothers to separate from them, they remain enslaved by the traditional rules that they violated by seizing power. They will have to break the bonds of the leffs to succeed in freeing themselves.

*634 VIII. The amghars and the policy of the leffs. -- For the
616 reasons that we have indicated, the first consequence of the
726 establishment /284/ of personal power is a recrudescence of external wars. The hate of the leffs is exacerbated, and in the course of these struggles one often sees veritable massacres of the defeated take place. We shall soon tell how, about 1870, the amghar Mohammed of Tagontaft had 60 notables from the leff of the "Aït Atman" killed by having their throats cut, when they were assembled with weapons in the house of his enemy, the amghar Achefar of Tagemout. Only a few years ago, before the conquest of the Souktana by the chiefs of Telwet, more than 100 men were likewise killed like sheep, after having been reduced by thirst in the agadir of Ighri. The internal wars were then caused in this tribe by the dissensions of the amghars, which were to facilitate the arrival of the Glawa.

During this period of political evolution the spirit of solidarity of each of the two opposite sides is thus reinforced, the "taqbilt" are united in war as if they really formed a single family. When the amghar Si Mokhtar Seksawi, of the fraction
[682] of the Aït Lhasen, had had his benefactor, the kaid Chtittihi,
[628] chief of the Aït Mousa, assassinated, he confiscated all his property and plowed his fields. But when he wanted to pay the blood price, it was to the leff brothers of his victim that he paid the money.

[178] Nevertheless, a prompt weakening soon follows the fever of the first years. As soon as the resources of the amghar are

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*634 642 notable charged with representing his brothers. The tribal council even deliberates sometimes in public; but the decision has been prepared in the amghar's house and the tribe conforms to it exactly. The distribution of the profits of justice, of which the notables collect no more than a very small part, shows that all authority is concentrated in the hands of Bou Naga.

*634 *631 (642) But even in this case the concern for preserving the appearance of an assembly, whose presence itself is obligatory when the entire confederation reunites with Sidi Brahim Ou ᶜAli or at the souq /sook/ el Arbaᶜ of Imouzzer, suffices to show how, in spite of everything, personal power here remains limited by the recollection of the fundamental institutions of the country of the Ida Ou Tanan. If, by a marvel of continuity, the minor amghars of the Aït Tinkert have been able, thanks to family alliances, to the existence of a very powerful clan, to succeed in obtaining and keeping the command of the whole tribe for a century, they have at any rate remained locked within the natural cadre /292/ that this third of the great confederation formed. Even so, they are still subordinate to what the independent Berbères /Berbers/ call jokingly the "Makhzen of Sidi Brahim Ou ᶜAli." Thus, in (619) spite of their power, they remain, like the leff-chief amghars of (671) the Seksawa, subject to the laws of the tribes (1).

1. For some years, the progress of the operation of the Makhzen /makhzan/ has manifested itself among the Ida Ou Tanan by a new development of personal power, thanks to the encouragement and external support given to the boldest clan chiefs. ᶜAli Ou Naser, amghar of the Aït Wanoukrim, Bihi ᶜAchao of Isk n Tghazout, and other party chiefs have subjugated by force the chiefs of the neighboring "afous." The artificial character of this movement has undoubtedly further accentuated the latent antagonism between the regime of the Aït arbaᶜin and that of the independent amghars.

175 /343 cont./
*631 crushing power of the new domination (1).
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1. Casbah of Taliwin of the Souktana.

*631 VIII. The companions of the great chief. -- For the admin-
*634 istration of the conquered tribes, the independent amghar depends
602 at the beginning on the notables and the members of the jema'a
613 of the small canton of which his father was formerly the chief. It is within these "ikhs," faithfully attached to his family from the beginning, that he chooses most especially the functionaries of the little state that he has created. He has found among them first of all the expedition leaders and the loyal mokhaznis, charged with forcibly keeping the conquered villages in submis-
*631 sion. When his power is confirmed by the Sultan, he soon tries
*634 to find among these earliest companions a cadi who will be able
693 to render justice favorable to the interests of the new government.
[648] This scholar, who at the same time will be the /344/ kaid's secre-
•[671] tary, will most often prove to be the resolute enemy of the Ber-
bère /Berber/ customary law, whose roots go down into a danger-
ous past of democratic institutions. He will settle most of the disputes according to his master's instructions, and the infallible justice of the holy book will serve to legitimize in all circum-
*631 stances the decisions of the temporal leader. Sometimes, too,
*634 according to the rank of the plaintiffs or the personal interest that
[692] the kaid takes in the settling of affairs, justice will be rendered, without any formality, by the makhzen /makhzan/ leader himself, seated on the threshold of his house. To free himself from all the petty affairs that give no profit, the kaid will choose a caliphate and a "mchaouri" /see "mechaouri," p. 440/, a kind of close advisor, information agent, and intermediary, charged besides with the command of his personal guard.

*631 The casbah, which has become a caravansary, fortress, store-
712 house, and castle at the same time, is administered by an "amin,"
*634 who is both major-domo and keeper of the provisions. The in-
[574] numerable guests who crowd together in the courtyard and stay sometimes for a long time while waiting for an audience with the

*631 /355 cont./
*634 obstinate resistance at least procured for the Aït Mhand ou Mousa
178 the preserving of their Aït Arbaᶜin and their moqaddems, accept-
616 ing only a liaison agent who plays the role of amghar.
726 The Tamarout fraction lost all its own institutions and has become similar, thanks to the action of the sheik Agzal, to its neighbors of the trail of the Makhzen /makhzan/. The Aït Breher, Aït Chaᶜib and Aït Tilet of the "Imsifern" leff resisted better. The first two of these "taqbilt" united closely to fight against the Mtougga's attempts at penetration. They restored the organization of moqaddems with more vigor than in the past. The
• [671] customary law alone is applied in their territory, to the exclusion of the religious law; the moqaddems are changed regularly, and choosing them from overly powerful families is avoided for fear of seeing appear amghars whose first concern would be to favor the policy of the kaids. The Aït Chaᶜib showed themselves to be the indomitable adversaries of the caliphates of the Mtouggi for an especially long time and consented to submit only on the express condition of preserving a preferential regime. They pay Bouaboud only the ᶜachour and some "frida." The Aït Tilet, the most distant, have remained apart up to now, and the amghar of the Aït Haddiyous, Ahmed ou Moulid, counts them among the independent "taqbilt" of the summits, whose destinies he tries to guide.

*631 XIV. The zones of influence (the Seksawa). -- The Mtouggi's
*634 clever policy in the penetration of the Demsira is completed in the high mountains, as we have seen several times, by alliances that he concluded with the amghars of the Seksawa. In that region, where up to these recent years the intrigues coming out of the casbahs of Bouaboud and Tagontaft have crossed, one perceives more /356/ easily at present how the amghars most often prepare, without knowing it, the establishment of the domination of the great chiefs.

[178] The appearance of "despotic power" at the end of the nine-
[642] teenth century in the region remaining faithful on the whole to
[775] the regime of moqaddems and assemblies is not explained solely
[669] by the normal workings of oligarchic institutions; the frequency of

/389 cont./

178 *631 726 648 The Berbère /Berber/ republics purchase this right to enter into a large state by still other sacrifices. In former times the internal wars, through the play of balanced alliances, engaged only hundreds of warriors armed with bad guns on the frontiers of these small cantons; henceforth, having come to the border of subjugated country, the tribe stands the shock of considerable masses of combatants, Arabs from the "gich" of the plains in the service of the Makhzen /makhzan/, Berbères /Berbers/ enslaved by entire confederations, innumerable contingents of the great kaids. When these harkas penetrate into the territory, no resistance is possible; in a few hours all the villages, the secular agadirs themselves are destroyed. Now entered on the list of the "naiba" tribes, the little state whose life formerly flowed on in a mountain cirque also participates in distant expeditions. The warriors will go tomorrow to re-establish a kaid in the Dra or to [177] fight a rogui /one who aspires to overthrow the sultan/ north of Fès; during these travels they will learn of laws other than the ones of their village and will come back impressed by Arab influences, city habits unknown up to then.

177 648 671 [179] But above all, conquest by the Makhzen /makhzan/ sanctions the definitive ruin of the "ʿorf," the Berbère /Berber/ law. For long centuries custom was tractable in order to become conformable with the essential rules of the religious law. In this country, which has seen so many reformers of Islam, scholars, and jurists arise, a slow penetration of the principles of the "chraᶜ" /sharᶜ, Sharia, Islamic law/ continued imperceptibly in order to eliminate, in the tribal law, the arrangements opposed to those of the holy book (1).

> 1. One would scarcely find -- except in what concerns the "rehania" -- the antichresis -- a few rules opposed to the chraᶜ /sharᶜ/ in the collections of customary law of the tribes of the Sous and of the Anti-Atlas.

Soon the "ʿorf" comes to be limited to the repression of crimes

/389 cont./

177 648 671 and offenses and to regulating the political life of the canton. At the same time the part of the "chra^{c}" /shar^{c}/ grows unceasingly; it embraces the status of persons and soon extends to property litigation.

177 648 671 * 631 * 634 It is most often at this moment that the political penetration of the Makhzen /makhzan/ is achieved. The "louh" of the tribes, the venerable collection of their customs, entrusted up to now to the care of the moqaddem or Aït Arba^{c}in, falls into the hands of the amghar, of the sheik of the canton, /390/ or of the kaid of the tribe. Henceforth it is a man whose power has no limits other than his strength who is in charge of ordering and forbidding. Of what importance to him are the ancient rules established by assemblies, the very memory of which is an offense to his power? [681] Besides, is it not better, in punishing the guilty, to set fines that take their resources into account? A well-to-do man will pay a large sum to get out of prison; a poor man will at the very least [693] be able to sell his field. As for the surplus, the cadi, faithful to the new master, will under all circumstances know how to judge according to the interests of the Makhzen /makhzan/.

Thus the Berbère /Berber/ institutions succumb one after another. Two forces unite against them, that of the chiefs and that of the sherifian Makhzen. One originated in the mountains themselves: amghars, chiefs of a canton, of a leff, or of a tribe, semi-independent kaids whose casbahs rise near the summits, assert their will, always more powerful and more absolute, to enslave the small republics for their personal ends and to transform the formerly free men into docile and resigned subjects. The other power comes from heaven, since it is from God that the sovereign derives his throne and his principles of government, when the Mussulmans recognized him as supreme leader; but, in reality, this theocracy is only the association of material interests and devouring ambitions by which the activity of the functionaries of the Makhzen /makhzan/ is explained. Neither de facto nor de jure can the Berbère /Berber/ institutions find any place in this government. The first principle of this absolute monarchy is that of the most complete submission of the inferior to the superior.

/412 cont./

*631 this progress still remains precarious, since passions, restrained
648 during the years in which the authority of the Sultan's representa-
17 tives is exercised without being contested, break out anew at the
[578] first "siba," with a still greater violence. The peace in which
[669] the new subjects then live is bought by the destruction of most of the traditions and customs, habitudes of local government and of primitive justice, which for the inhabitants of the mountains are inseparable from their very life.

[792] The marabouts, whose arbitration was exercised not only to stop the battles of cantons and tribes but also to settle in compliance with equity differences of a private nature, disappeared first; no longer do we see them intervene with sheiks and kaids to defend the poor and weak as they were privileged to do with the senates of "inflas" in the time of freedom. The old tribal law
[671] ceases to be /413/ applied and often the day of submission marks
[693] that of its effacement. It makes way for the more distant and abstract justice of the cadis, whose complaisance toward the new leaders is obvious.

*[634] At the same time, most of the economic institutions of the
[343] small Berbère /Berber/ cantons, whose regular functioning re-
[712] quired the deliberation of family representatives, are smitten with
[652] decline; the agadirs fall in ruins, the common treasuries are
[466] squandered, the corvées for mutual aid become irregular, main-
[653] tenance of the séguias and roads, even the protection of the crops are no longer the object of the same care as in former times.

[423] Finally, ownership of the land, so profoundly disturbed in cer-
[166] tain regions near the casbahs of the great chiefs, becomes uncertain; the constitution of the large domains of the kaids of the Atlas entails, in a country already too poor to feed its inhabitants, the disappearance of a large number of villages and the progressive exodus of the Berbères /Berbers/ toward regions where the security of possessions and persons is more certain.

[735] When the domination of the Makhzen /makhzan/ is established without intermediaries and allows all its weight to bear down on the tribes, thanks to the unlimited authority of foreign leaders, one sees profound poverty develop; one of the most constant principles

/417 cont./

619 In the same manner, temporary emigration has for 20 years
167 taken a new spurt; but each Sous tribe sends its sons into a few villages of its choice in the north of Morocco, so that one sees them group themselves by corporate bodies and by quarters; in the midst of foreigners they live by themselves, speak their dialect, receive ceaselessly from travelers the most detailed news of the events in their tribe, and continue to be connected by invisible bonds to their small fatherland.

167 Finally, the distribution of the very colonies of Chleuhs /Shluh/ of the Parisian suburbs or of the industrial cities of the north and center of France appears to us like a distorted map of the various social groups of the Sous; the tribes of Massat, of the Ida Ou Baqil, of the Ammeln, of the Ida Ou Gnidif are thus formed again in the garrets of Argenteuil, Puteaux, and Saint-Étienne, where life is organized by cantons and by villages (1).

1. Justinard, Revue des Études islamiques, 1928, pp. 477-480.

671 Without doubt, this is the place to recall that in other regions
171 of Berbérie /Barbary/ surprising survivals attest with striking
178 clearness to the vitality of the customary law of the tribes. It is known how the Kabyle "Kanoun," written down in French without the knowledge of our administrators, still at present bring traditional sanctions to bear on offenses repressed by French laws; these clandestine regulations continue to regulate the existence of villages of the Djurjura by adapting, not without some merit, to the political, economic, and moral transformations of our time (2).

2. Milliot, "Les nouveaux qanoun kabyles /The New Kabyle Qanoun/," Hespéris, 1926, 4th quarter.

343 712 [178] /305/ Among the Ichkajen Imi, a single agadir remains in use, that of Azar; another one, which is found at Arg, has been in ruins for eight years. Finally, there are still three occupied agadirs among the Ait Dris: those of Amassa, Tajelt Oufella, Meggount; others have been in ruins for a long time at Akhferga, Amdros, Kormad, and Kakt.

These agadirs are of two kinds. There are those that serve solely as storehouses, these are the most numerous; others are used both as storehouses and as réduits for defense in case of attack on the village. The latter are, in general, more spacious and have a rather extensive place in the interior, permitting the old men, women, children, and animals to stay in shelter while the able-bodied men occupy, for defense, the few storehouses pierced with battlements and the terraces. There is [312] always a cistern in the interior of these agadirs-fortresses. In this category are included the storehouses of Talmakant, Assaka, and Azar.

[333] In general the agadir is built with schist, which gives good slabs, rendering the construction easy: the stones are put together with a clay mortar. The walls are thick, blind, and high. The general shape is square or rectangular, except at Ikis, where [351] one finds an oval agadir. The terraces, jutting out, as everywhere in the mountains, are storied, given the slope of the terrain and the constant height of the walls. In the interior a series [417] of narrow passages gives access to the different storehouses; from these passages rise ladders formed simply by a tree trunk grooved with notches on which one places his feet. In front of the door of each storehouse situated in a story, a little platform projects out, which affords room for supporting the upper part of the ladder coming from below and for placing the lower part of the ladder, giving access to the higher story. These platforms are also useful to the owner of the storehouse for stopping before entering his room. Each chamber has only one door and no window.

343 712 124 We were unable to obtain information about any written rule of customary law concerning these agadirs. It is nevertheless practically certain that very old ones do exist, especially among

[671] [178]

4: Hoffman E-4 (no date) 1967 MW11 Shluh MW11 (ca. 1900)

IV. TRADITIONAL RURAL SOCIAL STRUCTURE

(P.44)

105
Structurally, the Berber and Arabic-speaking core-areas of rural 171
Morocco hold many features in common. Both areas are characterized by tribal units; both have kinship groupings defined by [611]
common descent in the male line; both have a patriarchy, and resi- [591]
dence of a married couple with the husband's family; both custo- [361]
marily reside in villages if they are sedentary, or in nomadic camps
if they engage in the care of flocks and herds. Both regions profess [771]
the same religion, and have similar religious institutions, associations, and beliefs. The outstanding differences between the Berbers and the Arabic-speaking peoples reside in those social institutions having a political nature, and in the legal systems. In these there is [64]
an almost continuous gradiation from the independent and decentralized Berber republics, through semi-Arabized and Arabized-Berber tribes, to the Bedouin *guich* tribes who were formerly completely involved in supporting an absolute and highly centralized government.

The traditional independence of the Berbers of the *Bled es Siba*, [648]
and the social pattern associated with it, survived until very re- [175]
cently, for the last independent tribes accepted government authority only in 1935. Berber independence in legal matters still continues, [671]
for, although the *dahir Berbere* (the French decree of 1930 giving [648]
Berber customary law equal status with Moslem law) was repealed in 1956, customary law still continues to determine legal process. In other matters the ancient trend towards Arabization continues [177]
and has been slightly accelerated, with groups demonstrating every degree of transition from their traditional pattern to that of the Arabic-speakers of the plains.

4: Hoffman . E-4 (no date) 1967 MW11 Shluh MW11 (ca. 1900)

623 635 634 legislative, and judicial functions. The council concerns itself with the maintainance of internal equilibrium between individuals by dispensing and enforcing the customary law, modifying it if necessary; maintains relations with outside groups, and conducts wars against them; administers the communal institutions (mosque, saints' tombs, mosque school, communal granary and cemetery, and irrigation system); distributes water according to the local pattern of water rights; administers and distributes communal lands both for purposes of agriculture and grazing; fixes the schedule for agricultural operations or nomadic or transhumant migration; and in some cases also manages the local market (Coon, 1931, pp. 96-109, 112-114; Deverdun, 1942, p. 307; Doutté, 1905; Hart, 1954, pp. 65-66; La Chapelle, 1929, pp. 32-33; Laoust, 1934, pp. 140-146; Loubignac, 1942, pp. 280-281; Paniagua y Santos, 1948, pp. 14-15).

The *jemaa* generally carries out its functions by appointing or electing executors of various sorts and delegating power and authority to these individuals. The most important of these is the president of the council itself, known as an *amghar* or *sheikh* if head of a district or tribal council, and otherwise as a *moqaddem*. Other functionaries include the administrator of communal labor (particularly on irrigation projects), the administrator or distributor of water, the communal policeman, the religious teacher, and specialists in the administration of customary law (known as *anezzarfou*, pl., *inezzourfa*), though the council reserves the power to revise and modify this legal code (Berque, 1955, pp. 107, 112; Hart, 1954, p. 65; Loubignac, 1942, pp. 280-281; Paniagua y Santos, 1948, p. 14).

• 671 c. *Customary Law*

Traditionally, all disputes among the Berbers, both of a civil or criminal nature, were settled through reference to traditional customary law (*azrif*), which was largely uncodified and showed slight variations from tribe to tribe. Although replaced among the plains populations by the Moslem *Shari'a*, Berber customary law is still functional in civil cases throughout the Middle and High Atlas (1957), partly through French intervention on its behalf (Coudino, 1942, p. 431; Johns Hopkins University, 1956, pp. 230-231).

The local and communal aspects of the *azrif* are known variously

4: Hoffman E-4 (no date) 1967 MW11 Shluh MW11 (ca. 1900)

as the *'adat* or *'urf*, the distinction between these two words being somewhat confused. Customary law is consulted in all civil cases (such as disputes regarding terrain, water rights, inheritance, etc.), and in minor criminal matters – the customary law having been replaced by a French-sponsored penal code in most aspects of criminal law since the establishment of the Protectorate. This customary law is established and revised by the local representative councils of each region; it may be administered either by them or by a designated arbiter (*annezzarfou*), this arbiter being required to have a great knowledge of the local law, and to be an intelligent and experienced man highly regarded by all. If possible, he should be a stranger to the group involved, or else divorced from its mundane affairs by virtue of being a holy man (Johns Hopkins University, 1956, pp. 231-232; Loubignac, 1942, p. 281).

The most important aspects of the *azrif* are water rights and (formerly) penal crimes such as theft, abduction of women, adultery, wounds, blows, and murder. Water rights are still carefully regulated by the *'urf* or customary law of each group. Among the Beni Uriaguel (99), for example, the *qanuns* or edicts of customary law dealing with irrigation carefully take into account the nature of flow in different rivers. Thus, on the Lower Rhis, in the Plain of Alhucemas, where the flow is constant but not altogether sufficient, the *qanuns* state that any man who purchases land must buy his irrigation turn independently. In the case of the Nekor River which is extremely erratic, the *qanuns* provide that the purchaser of land is automatically entitled to irrigation water, because most of the year there is sufficient quantity for all. Throughout the Berber areas litigation regarding water rights is kept at a minimum through the existence of water administrators (known as *amazzal*, pl. *imazzalen*, among the Shluh) who distribute the irrigation water in accordance with the recognized rights (Hart, 1954, pp. 56-57).

In its application to criminal acts the Berber *azrif* was characterized by great dependence upon oaths and upon the imposition of fines. This first feature (oaths) was the principal reason for the Berber court usually meeting in a mosque or at a market with an associated shrine, for in all cases the litigants swear by something to give efficacy to their oaths, and this is generally something which has